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<i>Judgment: approved by the court for handing down (subject to editorial corrections)*</i>	ICOS No:	20/076746
	Delivered:	22/11/2024

**IN THE CROWN COURT OF NORTHERN IRELAND
SITTING AT BELFAST**

—
REX

v

**GLENN RAINEY
WALTER ALAN ERVINE and
ROBERT SPIERS**

—
**Mr D McDowell KC with Ms R Walsh KC and Ms L Cheshire (instructed by Public
Prosecution Service for Northern Ireland) for the Crown**

**Mr G Berry KC with Mr S Devine (instructed by McConnell Kelly Solicitors) for
Glenn Rainey**

**Mr R Weir KC with Ms S Gallagher (instructed by Andrew Russell & Co Solicitors) for
Walter Alan Ervine**

**Mr K Mallon KC with Mr A Thompson (instructed by McCann & McCann Solicitors) for
Robert Spiers**

McFARLAND J

Introduction

[1] In this judgment after I state a full name, I will then refer to that person using their surname only, except when they share a surname, in which case I will continue to use their full name. No disrespect is intended.

[2] Jonathan Brown, Mark Sewell, Glenn Rainey, Walter Alan Ervine, Robert Spiers, Jill Morrison, Thomas McCartney, Christopher Haire and Reece Kirkwood appeared before this court on indictment 20/076746.

[3] Brown, Sewell, Rainey, Ervine and Spiers were jointly charged with the murder of Ian Ogle on 27 January 2019 (Count 1). Brown and Sewell have pleaded guilty.

[4] Morrison was charged with perverting the course of justice, assisting an offender and withholding information (Counts 2, 3 and 4), Kirkwood with withholding information (count 5), McCartney with assisting an offender and

perverting the course of justice (counts 6 and 7), and Haire with assisting an offender (count 9).

[5] Morrison has pleaded guilty to count 3 (assisting an offender), Kirkwood to count 5, McCartney to count 6 (assisting an offender), and Haire to count 9. The remaining counts (2, 4 and 7) were left on the books of the court on the usual terms. Count 8 related to another defendant who was discharged by the court after a 'No Bill' was granted.

[6] The convictions of Brown and Sewell have been admitted in evidence pursuant to Article 72 of the Police and Criminal Evidence (Northern Ireland) Order 1989 and the convictions of Morrison, Kirkwood, McCartney and Haire have been excluded.

[7] Rainey, Ervine and Spiers have pleaded not guilty to count 1. The Director of Public Prosecutions has certified this case under the Justice and Security (Northern Ireland) Act 2007 and the trial has proceeded before a judge without a jury. This judgment records the verdicts of the court.

[8] In the course of the evidence Rainey was sometimes referred to by a nickname "Saucy" and Ervine was sometimes referred to by a nickname "Bo."

The death of Ian Ogle

[9] Ian Ogle was 45 years of age and died on 27 January 2019 after he was attacked at approximately 21:30 by five men in Cluan Place Belfast close to its junction with Albertbridge Road.

The trial

[10] During the course of the trial I was asked to make certain rulings which I did on an *ex tempore* basis. I have set out three of these rulings in appendices to this judgment. I have not included the decisions pertaining to the admissibility of the evidence of Mark Buxton in relation to clothing comparison as that evidence was ruled inadmissible and did not form part of the cases against any of these defendants. The rulings set out in the appendices are as follows:

- (a) Prosecution application to admit the convictions of Brown, Sewell, Morrison, Kirkwood, McCartney and Haire – Appendix 1
- (b) Defence applications that I recuse myself as the trial judge – Appendix 2
- (c) Defence applications that each has no case to answer – Appendix 3

The history of animosity

[11] The Crown adduced evidence from a number of witnesses who were

members or associates of the wider Ogle family. They gave evidence about previous dealings between them and others in the east Belfast area, some of whom were the defendants and some were said to be associates of the defendants.

[12] This evidence did encompass potentially criminal and/or reprehensible behaviour and therefore consideration was given to admission of defendant and non-defendant bad character. I have been advised Fowler J determined that this background evidence relating to an incident on 1/2 July 2017, an incident on or about 2 September 2017, other confrontations prior to 27 January 2019, and incidents earlier on the evening of 27 January 2019 on Beersbridge Road and at the Prince Albert Bar were admitted as they did not fall within the definition of 'bad character' under Article 3 of the Criminal Evidence (Northern Ireland) Order 2004 as the evidence had to do with the alleged facts of the offence with which the defendants were charged.

[13] The witnesses giving this background evidence were -

- (a) Vera Johnston (Ian Ogle's partner)
- (b) Ryan Johnston (son of Ian Ogle and Vera Johnston)
- (c) Toni Johnston (daughter of Ian Ogle and Vera Johnston)
- (d) Lisa McAreavy (partner of Ryan Johnston)
- (e) Lisa Duffield (partner of Colin Ogle, the brother of Ian Ogle),
- (f) Hetty Duffield (mother of Lisa Duffield)
- (g) Emma Dryburgh (niece of Vera Johnston)
- (h) Isobel Miskimmin (sister of Vera Johnston)
- (i) Jodie Lee Currie (niece of Vera Johnston and daughter of Miskimmin)
- (j) Tammie Currie (niece of Vera Johnston and daughter of Miskimmin)
- (k) Andrew Gunning (a friend of Ryan Johnston).

[14] Ryan Johnston and Hetty Duffield gave oral evidence and the evidence from the others was adduced by having their statements read to the court by agreement.

1 and 2 July 2017

[15] An incident occurred at the Prince Albert Bar which is situated at the junction of Albertbridge Road and Newtownards Road. It started on the 1 July 2017 and continued into the early hours of the following morning.

[16] Ryan Johnston described being in the Prince Albert Bar around 22:30 on 1 July 2017. His aunt Lisa Duffield worked in the bar. The mood was described as good it being the aftermath of the Battle of the Somme commemoration parade earlier in the day. For a time, Ryan Johnston was in the company of his second cousin Neil Ogle and Ervine. Sometime later Rainey and Brown entered the bar and Ryan Johnston said that the tension in the bar started to rise.

[17] About 01:00 into 2 July 2017 Ryan Johnston described how Rainey was trying to collect money for a 'lock in.' (I have taken the meaning of a 'lock-in' as an event after closing time, with the doors locked creating, ostensibly, a private party with all alcohol (technically) sold before closing time thus circumventing the licensing laws.) Ryan Johnston said that the DJ wanted out to go home and Rainey appeared to take exception to this. Rainey then approached Ryan Johnston and was verbally abusive to him. Ryan Johnston stood up and Brown carried out a sustained assault on him which he said lasted for about 15 minutes. Eventually Lisa Duffield managed to get Ryan Johnston out of the bar by a back door. During this period Ryan Johnston said that Neil Ogle had been watching but did not intervene to protect him or stop Brown.

[18] Gunning said that he had been drinking that day eventually going to the "Con Club" (the Constitutional Club on Newtownards Road). He then went with his girlfriend and Ryan Johnston (who he referred to as Ryan Ogle) to the Albert Bar about 23:00-23:30. Initially the atmosphere was described as great with everyone having a good time. He saw Rainey, Brown and Ervine present in the bar. He said that Rainey then approached their table and made some comment to Ryan Johnston about him "firing him dirty looks" and offering to fight Ryan Johnston outside.

[19] Before Ryan Johnston could get up Rainey then punched him. Gunning rugby tackled Rainey onto the pool table. He described seeing Ryan Johnston lying across a bar stool with Brown stamping on his head. He described the events as being fuzzy, but he spoke of being at some stage outside the back of the bar and coming round to the front and seeing Toni Johnston, Vera Johnston and Ian Ogle. On re-entering the bar Gunning said a bottle and a bar stool were thrown at him and missed him. He described how Rainey and Brown with two other named people were throwing anything they could get their hands on towards "all the Ogles." In summary Gunning described this as a mini riot lasting for up to 10 minutes. As it was breaking up he saw Ervine and Ryan Johnston exchanging punches and then Rainey and Ryan Johnston fighting. He also saw Ian Ogle arguing with Brown and then Ervine hitting Ian Ogle twice to the face and then lifting a brick in an effort to attack Ian Ogle.

[20] Toni Johnston arrived at the scene outside the bar sometime after midnight and described the bar as being shut with the lights still on. She kicked at the door and Brown and Rainey opened it and came out. They barred her entry and pushed her back, but she managed to get past them and into the bar. She described observing a fight with a lot of people in the bar. She was punched by two different unidentified men and described bottles being thrown in the direction of her brother

and father. Eventually order was starting to be restored, and people being ushered out. Ervine ran over to Toni Johnston threatening to hit her with a bottle, but she evaded him. She then described someone shouting that the police were coming, and they left the bar.

[21] Outside the bar it would appear that a number of people assembled including Ian Ogle, and Vera Johnston. Vera Johnston having been telephoned by her son, had woken Ian Ogle and they both made their way to the bar. Vera Johnston described entering the bar and seeing broken bottles and overturned stools. Lisa Duffield was distressed, and Ryan Johnston had a black eye and an injury to his head. She said that there was a lot of arguing going on. As she left the bar she met up with Rainey, Ervine and Brown. She described a lot of "slabbering and shouting." She said that one of the men went to attack Ian Ogle with a brick.

East Belfast Taxis event on or about 2 September 2017

[22] A further incident occurred at what has been described by witnesses as an event organised as a celebration for the anniversary of the founding of East Belfast Taxis. One witness said she thought it was 2 September 2017 (that date being her birthday) and others described it as a Saturday, towards the end of August/September and on a summer's day. I would consider that the witness who remembered it occurring on her birthday is likely to be the most accurate with regard to the date, although the actual date is not of critical importance.

[23] Vera Johnston said that she was outside the Iceland shop on Newtownards Road with her daughter Toni Johnston, her sister Miskimmin and her nieces Jodie-Lee and Tammy Currie when they were approached by Ervine who was with his girlfriend. Ervine said that "I'm going to leave your son for dead" although she did not say to whom this threat was directed. Later when addressing Toni Johnston, he said "Your da will never walk the Newtownards Road again."

[24] Toni Johnston remembered the incident. She said that Ervine was shouting at her "Youse don't have a clue what's coming. I'm going to leave your brother for dead. What happened to your brother in the bar this will be ten times worse."

[25] Miskimmin described Ervine shouting into Toni Johnston's face saying, "I'm going to kill your brother when I get him." He also said that Ian Ogle would never be able to walk the road.

[26] Jodie-Lee Currie said this was after the Albert Bar incident. Toni Johnston and Ervine were screaming at each other and that cars were stopping on the road. She said that some people dragged Ervine away and he shouted, "If you think its bad what your brother got that night, wait to you see when I get him." Her sister, Tammy Currie described seeing Ervine as angry and very aggressive when confronting Vera Johnston and Toni Johnston. She thought Ervine said "Your brother thinks this is bad, when I get him, I'll kill him" or words to that effect.

Continuing animosity between the two groups

[27] Vera Johnston said that since the 1 July 2017 incident there was an ongoing campaign of threats and violence against her family.

[28] Dryburgh said that she had come across Ervine, Brown and Kirkwood outside her daughter's school when she confronted them, and Ervine referred to an argument between their respective daughters.

[29] Ryan Johnston said that there had been a few instances of intimidation. He said that on one occasion Greg Edgar (an associate of Ervine's and with whom Ervine left Larne Harbour the day after the murder) drove past the Russells shop on the Albertbridge Road and waved over at Ryan Johnston and Ian Ogle. Ryan Johnston went over to the car and told him to come and beat him "like they beat my sister" but Edgar declined to do anything. Ryan Johnston also met Brown in the Russells shop one day. Ryan Johnston issued the same challenge as he had made to Edgar. Kirkwood and Ian Ogle then appeared but there was no fighting just "slabbering."

[30] Ryan Johnston said that he had "words" with Rainey outside the City Hall. On a day after that, there was an exchange of Facebook messages between Ryan Johnston and Rainey. Ryan Johnston said that they were not 'friends' on Facebook. The date of these messages is unknown, but it was after the City Hall incident. Both incidents would have been between 1 July 2017 and 29 January 2019. It is not necessary to quote extensively from the content which could be characterised as abusive in nature but in a jocular style, reflecting an underlying animosity between the two men.

Timing of events on 27 January 2019 and thereafter

[31] Various witnesses gave evidence about events leading up to the death of Ian Ogle and thereafter. They have given estimates of the time of these events. The police have recovered evidence from CCTV cameras and evidence of telephony which has been synchronised so that the times provided by the CCTV images and the telephony can be regarded as accurate. Two emergency 999 telephone calls were also made, and the timing of those calls also adds certainty with regard to the timing of the event the caller was reporting.

Incident on Beersbridge Road in the evening of 27 January 2019

[32] Ryan Johnston, McAreavey, Toni Johnston and Vera Johnston gave evidence about them being present in Toni Johnston's home in Ballyhackamore for a meal and to watch a Glasgow Rangers football match on the television. Ian Ogle was also present. This was in the afternoon and early evening of 27 January 2019.

[33] Toni Johnston hosted a meal and said the others left her home after 20:00 maybe as late as 21:00. Vera Johnston thought it was just before 21:00, and McAreavey who was driving said it was about 20:30. A more realistic time would be about 20:40, but the actual time is not important.

[34] As they were driving back to Ian Ogle's address at Cluan Place they travelled along Beersbridge Road. They saw Neil Ogle walking along the road. Ryan Johnston said he appeared to be texting on his telephone. Ryan Johnston told McAreavey to stop the car, he got out of the car and ran towards Neil Ogle. He started punching him. He described how Ian Ogle got out of the car and although he did not appear to punch Neil Ogle he did grab and hold him saying to Neil Ogle that he hurt the family. Ian Ogle also said to Ryan Johnston to "get into him son."

[35] Ryan Johnston said the fight lasted a few minutes before Neil Ogle ran towards his partner's house. Neil Ogle was bleeding from his eye and Ryan Johnston saw him using a telephone and he heard him say "Right mate."

[36] Vera Johnston heard her son shout at Ian Ogle "you could have stopped this." She got out of the car and moved towards the fight and heard Ian Ogle shout at Neil Ogle to "get Saucy and Sewell." Vera Johnston said she pulled Ryan Johnston away and when the others got back into the car, she went to Dryburgh's house which was nearby and stayed there. The other three then drove away.

[37] McAreavey described that after she had parked the car she saw Ryan Johnston fighting Neil Ogle and heard Ryan Johnston say that Neil Ogle was family but that he hadn't helped him at the bar. After the fight she saw Neil Ogle on the telephone. She shouted at Neil Ogle - "go and get your f***ing cronies."

[38] At 20:45 a female caller with the name Wade telephoned the emergency (999) service stating that there was a fight outside Eddie Spence's on the Beersbridge Road. (Eddie Spence's is a fast food outlet close to the triangular junction of Beersbridge Road, Castlereagh Road and Templemore Avenue.) The caller described an ongoing fight, with three men hitting one man. The fight appeared to end soon after the commencement of the call with the victim running off and the attackers getting back into a car.

[39] The caller described a man in a "Rangers top" jumping out of a car. She believed that he was driving. She described the attackers as kicking their victim in the head and slamming his head against a wall. The caller thought the fight was a family matter with the victim being accused of attacking a female. The caller described two females (both wearing pyjamas and dressing gowns) getting out of the car and the car speeding off possibly in pursuit of the victim.

[40] After the assault on Neil Ogle had ended, McAreavey drove Ryan Johnston and Ian Ogle back to Cluan Place with Vera Johnston having gone off to Dryburgh's house. When they arrived, they realised that Vera Johnston still had the house key, and they had to wait for her to return. Dryburgh brought Vera Johnston down to

Cluan Place in her car. Vera Johnston handed the key over and then McAreavey, Dryburgh, and Vera Johnston left to go back up to Ballyhackamore to collect Toni Johnston.

Telephony between the Beersbridge Road incident and the Prince Albert Bar incident on 27 January 2019 (20:45–21:15 approximately)

[41] All the telephony recovered by the police relating to this specific period and later periods refers to mobile telephones associated with various people, including the defendants. The telephones associated with the defendants have not been recovered. The telephony evidence shows whether a telephone call was made from a number to another number, and if so the duration of the call but not the content. It also shows whether a text message was sent from that number to another number, but not the content. Other data has been recovered about the mobile telephone cell sites used by the numbers.

[42] Listed below are the telephone numbers of Neil Ogle (the victim of the assault by Ryan Johnston and Ian Ogle) and the five co-accused on the indictment. The evidence the prosecution rely on to associate the numbers with the individuals is set out at paras [44]–[59]. For convenience and for privacy reasons I have only shown the last three digits of the 11 digit numbers. The full numbers have been referred to in the court record:

- (a) Neil Ogle 468
- (b) Brown 038
- (c) Spiers 502
- (d) Sewell 763
- (e) Rainey 614
- (f) Ervine 290.

[43] Various calls were made, and messages sent to others by these six individuals and the recipients of the calls and messages also made calls and sent messages. These other individuals are set out below together with the last three digits of their telephone numbers. The evidence connecting these individuals to the numbers is also set out below in paras [60]–[62]:

- (a) Reece Kirkwood (416)
- (b) Richard McMurray (038)
- (c) Edgar (290).

[44] The account holder for telephone number 468 for the relevant period was Jennifer Leahy (Neil Ogle's partner). The subscription start date was 15 August 2018. A telephone seized from Haire on his arrest on 30 January 2019 had the telephone number 468 stored in the device under the contact name "Ogle Neil."

[45] The account holder for telephone number 038 for the relevant period was Brown. The SIM card in Haire's seized telephone had the telephone number 038 stored as "Jonny Brown."

[46] The call data for 038 shows that the telephone number was not used for outgoing communications after 00:08 hours on 28 January 2019. The SIM card and the handset have not been located. The telephone in the possession of Brown when he was arrested on his return from Thailand had a SIM card utilising a Thai number.

[47] Telephone number 502 is a pre-paid device, and it is not registered to any person. The device has not been located. The telephone number 502 is stored in the device seized from Haire as "Spiersy."

[48] A 'top-up' transaction to load the number 502 with credit was carried out on 7 January 2019 at SemiChem in the Connswater Shopping Centre (situated close to the junction of Newtownards Road and Albertbridge Road). CCTV images capture a male carrying out this transaction. He is wearing a blue coat with a fur-trimmed hood and a pale baseball cap. The transaction was paid for in cash.

[49] A similar coat with a detachable fur-trimmed hood was seized by police on 19 June 2019, from the home of Spiers. The police recovered a photograph from Spiers' Facebook page from February 2019. It shows him wearing a blue coat with the fur-trimmed hood.

[50] Outgoing call data was obtained for telephone number 502 from 6 January 2019 to 29 January 2019. This data showed numerous calls to persons closely connected to Spiers during this period - 152 calls to his then partner, Tayler Laughlin; five calls to his father and 14 calls to his sister.

[51] A police officer spoke to Spiers's former partner on 13 June 2019 and was told by the former partner that the picture was of Spiers and that the blue coat he was wearing was his coat and that he wore it all the time.

[52] The telephone number 763 is also a pre-paid device and is not registered to any person. A 'top-up' transaction took place on 26 January 2019 at Shops 4 You on Newtownards Road. CCTV footage shows a male entering the shop wearing Adidas tracksuit bottoms and an Adidas jacket with a white band across the chest and stripes down both arms. He is wearing a pale beanie hat with a dark coloured logo and grey Adidas trainers with darker stripes.

[53] Outgoing call data was obtained for telephone number 763 from 27 January 2019 to 8 February 2019. It shows two calls to the son of Sewell's partner at 22:11

hours and 22:20 hours on 27 January 2019. The son of Sewell's partner lives with Sewell and his mother at 14 Wye Street. The number associated with Sewell's partner's son tried to call 763 on multiple occasions in the early hours of 28 January 2019 and again on 29 January 2019.

[54] Telephone number 763 called a number 968 at 22:06 hours on 27 January 2019 for three minutes 38 seconds. Telephone number 968 is registered to Sewell's father however when Sewell was a remanded prisoner it appeared on Sewell's prison call list as "Jacqueline" who is recorded as "Mum."

[55] Telephone number 614 is registered to Rainey. On 30 January 2019 police seized a mobile telephone from Kirkwood. In that device the number 614 has a contact name of 'Sauce.' The handset or SIM has not been recovered by police.

[56] On 30 January 2019, police searched Ervine's address at 5 Newcastle Street and seized a white/purple Nokia telephone located in a meter box. The telephone number 290 was stored in the handset under the contact name - "ALAN New Ervine." The telephone seized from Haire had the telephone number 290 stored under the contact name "Bo." The telephone seized from Kirkwood had the telephone number 290 stored under the contact name "The dog."

[57] On 4 July 2017 Constable Kane was on duty at Strandtown police station when Ervine attended to speak to police about an unrelated matter. He confirmed his personal details including his telephone number 290. Constable Kane spoke to Ervine on 8 July 2017, 27 July 2017 and 8 August 2017 using that number 290.

[58] CCTV images at Today's Local shop on 26 January 2019 at 12:12 hours show a male at the ATM and making a phone call. Call data records show that 290 made a call at 12:12 hours on that date, for one minute three seconds. At or about the same time a cash withdrawal of £10.00 was made from Ervine's bank account from this ATM.

[59] On 15 May 2019 police utilising the number 290 opened up the WhatsApp application. The profile picture displayed was of a male and a female. Detective Constable Emma Ferguson recognised the male was Ervine.

[60] On 30 January 2019 police seized a mobile telephone from the top of a fridge at Kirkwood's home at 11 Tower Court. The telephone had an IMSI (International Mobile Subscriber Identity) ending 570. This was a pre-pay telephone with no subscriber details recorded. The telephone number 416 was used by the handset with an IMSI ending 570.

[61] As at 27 January 2019, the registered subscriber for telephone 038 was McMurray.

[62] As at 27 January 2019, the registered subscriber for telephone 290 was Edgar.

[63] A number of calls and messages were made between 20:45 (the time of the 999 call by Wade describing the fight on Beersbridge Road) and 21:14 (the time of the arrival of a car outside the Prince Albert Bar referred to at para [77] below). For convenience and to improve the narrative I am going to refer to the names of the people who are associated, on the prosecution's case, with the telephones. This is not direct evidence that those persons actually made or received the calls or messages just that the telephones associated with them were used.

[64] At 20:45:42 Neil Ogle telephoned Brown with the call lasting one minute 37 seconds. Spiers sent an SMS text message to Brown at 20:46:30 and at 20:48:11 Brown telephoned Neil Ogle with the call lasting 43 seconds.

[65] I now list the calls and text messages between Brown, Sewell, Rainey, Ervine, Spiers, Kirkwood, McMurray and Edgar between 20:48:11 and 21:08:01:

- (a) 20:49:10 Brown to McMurray call lasting 17 seconds
- (b) 20:51:59 Kirkwood to Ervine call lasting 58 seconds
- (c) 20:51:59 Ervine to Edgar call lasting four seconds
- (d) 20:52:04 Brown to Spiers call lasting 37 seconds
- (e) 20:52:17 Ervine to Kirkwood call lasting two minutes 58 seconds
- (f) 20:54:09 Brown to Sewell call lasting two seconds
- (g) 20:55:11 Brown to Sewell call lasting two seconds
- (h) 20:55:23 Ervine to Edgar call lasting one second
- (i) 20:55:45 Brown to Rainey call lasting 19 seconds
- (j) 20:56:06 Sewell to Brown call lasting 31 seconds
- (k) 21:00:26 Kirkwood to Ervine call lasting 53 seconds
- (l) 21:02:24 Ervine to Kirkwood SMS (text) message
- (m) 21:02:29 Spiers to Brown SMS (text) message
- (n) 21:03:00 Kirkwood to Rainey call lasting one minute 5 seconds
- (o) 21:04:30 Brown to Spiers call lasting 14 seconds
- (p) 21:04:47 Kirkwood to Ervine call lasting 30 seconds

- (q) 21:04:53 Brown to Rainey call lasting seven seconds
- (r) 21:05:02 Ervine to Neil Ogle call lasting two seconds
- (s) 21:05:49 Ervine to Brown call lasting seven seconds
- (t) 21:08:01 Brown to Rainey call lasting 14 seconds
- (u) 21:08:47 Ervine to Kirkwood call forwarded 2 seconds
- (v) 21:09:29 Ervine to Kirkwood call forwarded 2 seconds
- (w) 21:09:52 Kirkwood to Ervine call lasting 14 seconds
- (x) 21:12:35 Kirkwood to Ervine SMS (text) message.

[66] After 21:09:29 no further calls were made from the telephones associated with Brown, Sewell, Rainey, Ervine or Spiers until 21:24:08

Movements of vehicles and individuals in the East Belfast area during the evening of 27 January 2019

[67] All five of the defendants accused of the murder had houses close to each other on the north side of Newtownards Road. Brown lived at 3 Wolff Place which is adjacent to Pitt Place off Newtownards Road. Sewell lived at 14 Wye Street off Dee Street. Rainey lived at 10 McArthur Court off Island Street. Ervine lived at 5 Newcastle Street, off Island Street and Spiers lived at 20 Mersey Street. They may additionally have used addresses of partners, who also lived in the same general area.

[68] A map of the East Belfast area was prepared by Neil Kennedy, a police mapper (exhibit NRK5B). This marks the location of a number of private, commercial and public CCTV cameras which have been allocated letters on the map. When referring to cameras I will use those letters. The police recovered footage from the cameras and have synchronised the timings to ensure that, notwithstanding the times showing on individual footage, there is a single and correct timeline based on Greenwich Mean Time for each recording.

[69] In the subsequent paragraphs I will make reference of vehicular movement in the area. Matthew Cass, a forensic image analyst is an expert in imagery analysis specialising in vehicle identification. He has observed the CCTV images to which I have referred and has given his opinion as to the make and model of the vehicle captured by the images.

[70] At 20:47:30 a dark coloured car is parked on Pitt Place. Brown's home at 3 Wolff Close backs on to Pitt Place. The car lights flashed indicating a remote key unlocking it, and it then drove off away from the camera before turning left on to

Newtownards Road (Camera P). Cass was of the view that because of the poor lighting and lack of detail it was not possible to identify the vehicle. It was, however, similar to a Mark 6 or Mark 7 Volkswagen Golf, a Volkswagen Passat B7 or B8, a second-generation BMW 1 series Mark 2 or a third generation Seat Leon.

[71] At 21:08:27 a man is seen running along Frome Street from the direction of Tern Street. (Camera C)

[72] At 21:09:21 a dark toned car pulled out of Wye Street turned left into Frome Street and then left into Ina Street (Cameras B and C). Cass was of the view that although the vehicle is relatively large in the frame, there is poor lighting and only some detail is captured. However, he was of the opinion that it is most likely a third generation Seat Leon, although a second-generation BMW1 series fitted with a 'M Sport' rear valance could not be totally ruled out.

Incident at the Prince Albert Bar on 27 January 2019 at or about 21:15

[73] Lisa Duffield had been working earlier on 27 January 2019 and when she finished she went to the Prince Albert Bar to meet up with her mother Hetty Duffield who was working at the bar. She arrived about 19:00 and remained there with her mother for a period she described as being "about an hour or so." She described how the door then burst open and Sewell entered and went straight up to her issuing a threat - "You're f***ing getting put out of the country. You and your family." He may have mentioned the words '24 hours.' She said she asked him what was going on and he replied "Neil Ogle is lying in a pool of blood, and you got him set up" or words to that effect. He then left shouting "Get out of the bar now."

[74] Hetty Duffield said that she followed Sewell out as she wanted to find out what he was talking about. Once outside she saw a 'biggish black car' parked outside the bar facing the Newtownards Road. She stood on the entrance steps and Sewell was to her left. She said that he was about three metres away. (This was an estimate of the distance that she had indicated in the courtroom when giving evidence).

[75] She asked Sewell what was going on and he replied shouting "I've been a friend of yours for years but you're out too" and pointing his finger at her. She noticed Brown standing at the far side of the car which she described as the driver's door, although Brown at one stage walked along the side to the back of the car when she saw him wearing shorts. Sewell and Brown got into the car and with Brown driving they went to Newtownards Road and turned cityward.

[76] She did not see anyone else in the car or in the vicinity of the car. She described the rear window of the car as being dark and like a mirror.

[77] A CCTV camera at the Glider bus stop on the Albertbridge Road (Camera A) captured a vehicle arriving at the Prince Albert Bar and parking up pointing in the direction of Newtownards Road. The time of its arrival is 21:14:00. The images are

not particularly clear, but four individuals can be seen getting out of the car, three on the near side and one on the offside. Two on the near side got back into the car almost immediately. The other two entered the bar returning outside a short time later. One then turned round and went back into the bar. The other followed him for a short distance but did not re-enter the bar and remained outside. The first person then returned outside. At one stage the person turned towards the door of the bar and pointed. Another person then left the bar walking over towards the car and the person who had just left. This person was pointing their arms whilst standing by the car. Meanwhile the other person who had not entered the bar the second time had made their way round the car and got in on the offside. Another person in a T-shirt exited the bar and came over and the person by the car got back into it and it drove off at 21:16:00.

[78] On the assumption that this is a right-hand drive car the driver appeared to be wearing a light coloured hat, a dark coloured top and grey or light coloured bottoms. The bottoms appeared to be full length and not shorts. His top had a distinctive horizontal stripe across the chest and the arms appeared to have a vertical line or several vertical lines running down the sleeves. The passenger initially was wearing a hat which appeared to have been removed by the time they had left the bar the second time. This person had dark coloured tops and bottoms, although the top had a light coloured design or motif in both the right and left chest area.

[79] Matthew Cass was of the opinion that because of the poor lighting and the 360 degree camera distorting the imagery, only some detail is captured. However, there is sufficient detail for him to state an opinion that the vehicle is a third generation Seat Leon.

[80] Another CCTV camera at the junction of Montrose Street and Newtownards Road (Camera E) captured a vehicle driving cityward along the Newtownards Road and turning left into Belvoir Street. The time was 21:16:05. Cass was of the view that because of the poor lighting, the lack of detail and the recording system generating large compression artefacts which mask detail it was not possible to identify the vehicle. It was however similar to a second-generation BMW 1 series Mark 2, a third generation Seat Leon or similar vehicle.

The death of Ian Ogle

[81] Two CCTV cameras at Glider Bus stops on Albertbridge Road captured five people passing at 21:18:50. Camera F is on the south side facing north across the road and capturing the junction with Templemore Avenue. From their appearance and gait, they all had the appearance of being male. The men appeared coming along Templemore Avenue towards the junction and then turning into Albertbridge Road walking along the footpath in the direction of the City Centre and Cluan Place. At this stage their walk was brisk, but they were not running.

[82] This brought them under the Glider Bus stop on the north side and camera G. This captured the men passing the bus stop. Two people can be seen sitting at this

bus stop, and one got up and looked down at the men after they had passed. A telephone box was visible beyond the bus-stop in the direction of Cluan Place and a man was seen going into it and then exiting it after the five men had passed.

[83] The CCTV images show the men passing under the bus-stop in the following sequence although the police have allocated numbers to these individuals which do not match the sequence. I will be using the numbers allocated by the police:

- (a) Male 4 (who the prosecution assert is Ervine). He appeared to be carrying something in his left hand and was wearing a blue coloured zipped up jacket with the hood up and wearing dark tracksuit bottoms, with white stripes down the legs similar to the Adidas brand. He was wearing grey trainers and was walking slightly ahead and on the road.
- (b) Male 2 (who the prosecution assert is Sewell). He was wearing a dark hoodie type top with a distinct golden yellow pattern across the chest and on both the right front shoulder and back left shoulder and dark trousers. His trainers were similar to Adidas branded trainers with stripes. He had a dark 'beanie' type hat and as he passed the bus-stop he was tightening up the drawstrings of his hood. In doing so he turned round in a clockwise direction. The next male (Male 5) then passed him, and he followed.
- (c) Male 5 (who the prosecution assert is Spiers) He had a greenish jacket with a solid line down both arms. His hood was up, and he has a light coloured scarf over his face. He may also have been wearing a 'beanie' hat and his hood was up. He was wearing dark tracksuit bottoms or trousers and grey trainers. There appeared to be a long object sticking out of the right rear pocket. It had the appearance of a knife as a blade appeared to be protruding out of the pocket with the handle inside the pocket. He appeared to be wearing gloves.
- (d) Male 3 (who the prosecution assert is Rainey). He was wearing very distinctive Napapijri headgear with a motive incorporating the Norwegian flag. He also was wearing a red scarf covering his lower face. He had a dark jacket with a small circle motif on the upper right chest. He wore grey tracksuit bottoms possibly incorporating the Adidas stripes down the side.
- (e) Male 1 (who the prosecution assert is Brown) He had a navy coloured hooded top which was probably the Adidas brand. There was a broad horizontal stripe across his chest and stripes down the arms. He was wearing a 'beanie' hat, light grey tracksuit bottoms and light trainers.

[84] Michael Gannon said that he had been in the area. He had no credit on his telephone and wishing to make a telephone call he walked to a public telephone on the Albertbridge Road. He described it as being just outside the Keens furniture store (a store at the junction of Albertbridge Road and Templemore Avenue).

[85] There is no phone box at this location but there is a phone box further to the west after Paulett Avenue and the Glider bus stop with Camera G and adjacent to a small community park.

[86] Approaching the telephone box he noticed two men aged 35–40 years talking to each other. One was described as wearing a blue T-shirt. He said that he also saw two people standing at the bus stop.

[87] When he was in the telephone box he saw five or six men he thought were wearing hoodies. None of the men were more than five foot eight inches in height. They approached the box at pace and then picked up pace after they passed him. He described one of the males as carrying a knife in his back pocket. The handle was in the pocket, and he saw the blade. Being a chef, the knife attracted his attention. He thought it was a 'Global' make with a seven to nine inch blade.

[88] He said that the group of men started running towards the two men he had observed earlier. As they approached the two men they produced batons. The men then attacked the man wearing the blue T-shirt and Gannon said they gave him a good hammering for about two minutes. He saw the man being kicked and punched and hit with batons, but he did not see him being stabbed. The group then started walking back the way they came. Gannon crossed the road and looked back to see them departing.

[89] Kevin Senbrook is the pastor of the local Covenant Love Church. The building is on Albertbridge Road just beside Cluan Place. He said that he had been speaking to Ian Ogle about 21:00 at the entrance of Cluan Place off Albertbridge Road in Belfast. Ian Ogle was in an agitated state at the time and said, "they were on their way." Senbrook had a sufficient foreboding about what was about to happen as he started to pray with Ian Ogle. A man who was walking a dog and was known to Ian Ogle then approached them.

[90] Senbrook said that he saw a group of about five men approach them from the Templemore Avenue direction. All but one had hoods up or had scarves. The other had a partial beard. Senbrook initially thought they were teenagers but then realised it was something more sinister. When they got to about fifteen yards away they started to move quickly, and Ian Ogle moved towards the group of men. The men then attacked Ian Ogle with such a ferocity that Senbrook described their conduct as being "like a pack of hyenas." The scarfs were well up over their faces and he could not see their faces. The man with the beard appeared to be older and in charge. Senbrook described the use of a bat which looked like a baseball bat and was used to strike Ian Ogle on multiple occasions. Ian Ogle went down, and they continued to hit him. They then started to walk away and Senbrook described how the smallest one of the group returned to stamp on his head four or five times but after he walked towards him telling to stop the man stopped the stamping, turned away and went after the others.

[91] Gunning had been out walking his dog and joined Senbrook and Ian Ogle.

After they were chatting for what he estimated was two minutes, Gunning noticed two or three people running towards them from Templemore Avenue direction on the same side of the road. He said they were about twenty to thirty metres away when he first saw them, and he estimated that there were about seven in total. He alerted Ian Ogle who turned around to face them. The first man approached and after some hesitation he hit Ian Ogle. The others then started beating him. At this stage Gunning was about two or three metres away. Ian Ogle tried to shield himself, but he was beaten to the ground.

[92] Gunning gave some descriptions of the men. One was wearing a hood with a scarf or ski mask covering the bottom of his face. He thought this man was carrying a 'telescopic flick bat' which was used to strike Ian Ogle up to fifty times to the face, head and shoulders. Gunning said "f*** sake lads that's enough" and the man approached Gunning and said "it's a f***ing 'nough" before turning to hit Ian Ogle repeatedly. It was a local accent, but Gunning did not recognise it. Gunning said that he is five foot nine or ten and this man was the only one as tall as him, with the others being smaller.

[93] Another of the attackers had a "long skinny metal rod type thing" which was used to strike Ian Ogle repeatedly. This man had his face covered with only his eyes visible. Another had a baseball bat about two feet long which was used to hit Ian Ogle. This man was a few inches smaller than Gunning.

[94] Gunning said that they all were hitting Ian Ogle. One shouted about a camera which Gunning took to mean the CCTV camera on the 'Peace Wall' which surrounds Cluan Place. The man with the flick bat then approached Gunning to about three metres and said, "if you f***ing say anything you will get the f***ing same." The men then turned and ran off, with one remaining to repeatedly stamp on Ian Ogle's head with a lot of force. Gunning thinks he stamped at least twenty times. The others were calling to this man and after about thirty seconds or so he stopped and ran after them. This man was described as smaller than the rest and coming up to Gunning's nose.

[95] The actual attack was also captured on CCTV. It was a police camera located on Cluan Place pointing towards the Albertbridge Road (Camera H). The camera was approximately 60 metres from the mouth of Cluan Place. It recorded the incident although the quality of the recording was not sufficient to provide detail of the individuals involved. The group of men appeared from the left or north-east. It showed the altercation commencing in the middle of Cluan Place and then moving cityward towards the pavement adjacent to the junction with Albertbridge Road. It recorded each of the five individuals as being directly involved in the assault. One person appeared to fall to the ground at the edge of the pavement and he received kicks and stamps. One attacker appeared to linger behind when the other four depart but this attacker soon left in the same direction. The attack lasted for 30 seconds according to the time shown on the footage (21:19:31 to 21:20:01)

[96] An ambulance was on the scene rapidly and it was apparent to the

paramedics that Ian Ogle was dead, although life was not formally determined as being extinct until 22:12 by Dr Mawhinney at the Royal Victoria Hospital. Dr Ingram, the State Pathologist for Northern Ireland carried out an autopsy on 23 January 2019 and found that Ian Ogle had been stabbed a total of 11 times. Eight of the stab wounds were clustered together in an area centred around the left side of the top of the back. One of the wounds had penetrated the body sufficiently deeply to have caused a life-threatening internal injury and this wound was situated on the left side of the upper back quite close to the midline. The trajectory of the blade of the knife showed partial transection of the wall of the aorta, a blood vessel from the heart to the circulatory system. This resulted in catastrophic internal bleeding which resulted in rapid death. The cause of death was certified as a stab wound to the chest.

[97] In addition to the stab wounds, a number of other injuries were noted including a fracture of the skull involving the roof of the eye socket, which was almost certainly a result of Ian Ogle having collapsed onto a hard surface.

[98] There was extensive bruising with abrasions to the face and head and other parts of the body. There were 37 bruise sites in total, seven abrasion sites, one laceration and one puncture wound. There were numerous petechial haemorrhages. Some bruises could have been caused by punches whereas injuries on and around the ear and on the right side of the scalp were more likely as a result of a kick or kicks from a shod foot.

[99] Dr Ingram did not observe any parallel linear, or 'tramline', bruising on the body. Such bruising is indicative of the striking of a body with a rod-shaped object.

The immediate aftermath of the killing

[100] Senbrook did not see the direction in which the men departed as he was focussed on Ian Ogle lying on the ground and providing assistance to him. Gunning said they ran in the Templemore Avenue direction and Gannon described how the men walked back towards him, although he left the telephone box to cross Albertbridge Road. He said the men returned the way they came and were running.

[101] Cameras G and F captured their movements moving in that direction. The group of five men passed under the bus-stop at G at 21:20:14. Using the numbers allocated by the police, Male 4 is first to arrive. He appeared to be carrying a gold/silver coloured baton in his right hand which looked to be extended. He was followed by Male 5 who was slightly behind him. He appeared to be carrying a knife or similar object in his left hand. After another, but shorter gap, Male 3 appeared closely, followed by Males 1 and 2. They were also caught on camera F on the other side of the road. The pace seemed to have slowed down and the final group of three had managed to catch up with Male 5. All turned left into Templemore Avenue in the direction of Newtownards Road.

[102] When the group turned left into Templemore Avenue, two separate groups of

four people then observed them make their way along Templemore Avenue. One group comprised two couples leaving Templemore Baths, and the other group were the four women in Dryburgh's car driving down from Ballyhackamore having picked up Tori Johnston.

[103] The four people exiting the Templemore Baths were on the east side of Templemore Avenue and observed the group on the opposite pavement. Gary Proctor thought it was around 21:20. He had his back to the Baths with the other three (his wife Sharon Proctor and Aaron and Alison Noble) facing him. He, and the others, described the streetlight above them as flickering although the other streetlights were lit. He saw a male around five foot eight or nine inches in height walking quickly wearing a grey or light coat with a hood covering his head. He was suspicious of the man and alerted the others.

[104] The first man stopped at the junction of Langtry Court and Gary Proctor then saw a second man, described as slightly shorter at five foot six or seven inches, again wearing a hood but also a scarf over the lower half of his face. This man was holding a knife, but he was not sure in which hand. It looked about eight inches in length. Three other men followed although they were in less of a hurry. The first two men walked further along Templemore Avenue and then left into Madrid Street, the next street after Langtry Court. The following three men then turned into Langtry Court and got into a car that was parked facing Templemore Avenue.

[105] Gary Proctor said the car was parked along the side a church hall. (A church hall is situated on the north-west side of the corner of Langtry Court and Templemore Avenue.) The car then drove off turning left into Templemore Avenue and towards Newtownards Road. It then turned right into a street which Gary Proctor said was two or three streets further away.

[106] Sharon Proctor having been alerted by her husband observed the first male walking quickly and estimated his height at five foot nine inches. She said the second male was about the same height and was wearing a scarf over his face. The second male was carrying a large knife in his right hand down by his side. She saw more men following but could not remember how many. The first two men walked further up Templemore Avenue, and the second group got into the car which she described as a black Seat Ibiza. She described the car as reversing into Templemore Avenue and then driving off down Templemore Avenue towards Newtownards Road.

[107] Aaron Noble estimated that there were eight to ten people with four or five in each group. The first group contained a man carrying a knife in his right hand. He thought this group were all about five foot eight inches or above, and 18-21 years of age, although all were wearing scarves or balaclavas. They ran past Langtry Court and then turned left into Madrid Street.

[108] He said that there was nothing to differentiate the second group from the first. This group of between four and five males then got into a car on Langtry

Court. The car, a black Seat Leon, was facing into Langtry Court and drove off down to the end, turned, and then drove back towards him. It turned left into Templemore Avenue and then turned into Major Street. His wife Alison Noble called out the registration number - JGZ 7406. Aaron Noble then rang the police at 21:22.

[109] Alison Noble saw men on the other side of Templemore Avenue. She said they turned into Madrid Street (the street after Langtry Court on the left). The first two were wearing balaclavas and the second was carrying a knife in his left hand. She referred to another two men following and described all four men getting into a car parked in Langtry Court. The car drove up into Langtry Court and then turned before returning and turning left into Templemore Avenue before turning right into the second street down.

[110] She described the car as a fairly new black Seat Leon. She took down the registration number on her telephone - JGZ 7406.

[111] Meanwhile Dryburgh was returning in her car with Vera Johnston and McAreavey back to the area having collected Toni Johnston. She described driving along Newtownards Road and left into Templemore Avenue. She noticed five males running and felt that there was something wrong, so she slowed down. She described the men with faces partially covered with scarfs and wearing beanie hats.

[112] Dryburgh pulled into Harvey Court which is opposite Langtry Court and carried out a three point turn so her vehicle was facing towards Templemore Avenue. She saw a dark coloured hatchback car and remembered a partial registration number beginning JCZ. She saw a man in the front passenger's seat with a scarf over his face. She saw a man approximately five foot eight in height standing at the corner of Langtry Place wearing a green/black/red Glentoran scarf and was waving to two others passing Langtry Court. The final man she described as five foot six to eight inches in height with a hood pulled up over the hat. She said the two males who ran past Langtry Court returned and all five got into the car, which she said drove out and right into Major Street. She then drove to Cluan Place.

[113] McAreavey was in the front passenger's seat and said that she saw five to seven males running along Templemore Avenue. After Dryburgh parked her car, McAreavey saw the men and she described them as "bolting." They ran into Langtry Court and saw a couple of men (using her words) getting into a car which she said was a Seat Ibiza and was facing inwards. At that stage Toni Johnston was very agitated in the back seat and distracted McAreavey who did not see the men again but saw the car turn left into Templemore Avenue.

[114] Toni Johnston described their route as along Newtownards Road, left into Belvoir Street. (If this was the route taken it would have involved a right turn into either Major Street, Martin Street, or Hartley Court.) She was in the back seat behind the driver. She said she saw a group of possibly four men running on Templemore Avenue. One ran ahead and into Madrid Street and the other three got into a dark

car on the street opposite her. She tried to get out of the car but was in the back seat and there was a child-proof lock. She was kicking the door and shouting. She did not see the car again.

[115] Vera Johnston was in the back seat behind the passenger. As they drove along Templemore Avenue she noticed two men running with part of their faces covered. She noticed a car sitting in Langtry Court with its lights on which caught her attention as there was no one getting into it. She said that McAreavey was getting agitated. She then received a telephone call from Gunning about what had happened at Cluan Place, she told the others and Dryburgh drove round to Cluan Place.

[116] Three sets of cameras at the East Belfast Network Centre (Cameras I, J and K) recorded very poor quality footage and two people can be seen hurrying along Madrid Street and then turning into Westbourne Street between 21:22:19 and 21:23:01. Two people are recorded at 21:28:26 crossing Newtownards Road after running out of Susan Street and then in the direction of the Pitt Memorial Park (Camera L).

Cell Site analysis concerning the mobile telephones

[117] Paul Hope is an expert in analysing digital data as it relates to mobile telephones and in particular how mobile telephones operate by connecting with telephone masts. The mobile telephone companies operating the services utilised by telephones associated with various people referred to in this judgment have provided data which not only incorporates telephone calls and SMS messaging but also device data records (“DDR”). A DDR is a record of the telephone handset receiving downloaded data and when the telephone handset, on a random basis, is monitoring its location to locate the nearest and best available mast in anticipation of being in a position to utilise that mast if required. It does so by sending out radio signals.

[118] The area containing the relevant addresses and locations involved in this case is very small, comprising about a square kilometre and it is serviced by six mobile telephone mast cell sites. They are shown on map reference NRK5B and are given numbers. The reference to degrees for each mast reflects the Azimuth directions from that mast (see [119] below). They are:

- (a) No 1 Central Station, which despite its name is not located at Central Station but on Albertbridge Road adjacent to Cluan Place. (60 degrees, 180 degrees and 300 degrees.)
- (b) No 2 Mountpottinger East, located on Mountpottinger Link at Short Strand. (90 degrees, 210 degrees and 330 degrees.)
- (c) No 3 East Belfast Constitution Club, located at the junction of Albertbridge Road and Newtownards Road. (90 degrees, 210 degrees and 330 degrees.)

- (d) No 4 Ballymacarrett 2, located at Island Street adjacent to the Sydenham By-Pass (A2). (60 degrees, 180 degrees and 300 degrees.)
- (e) No 5 Victoria Channel, located on the off slip from the M3 towards Sydenham Road adjacent to the SSE Arena. (60 degrees, 180 degrees and 300 degrees.)
- (f) No 6 Glentoran, located at the Oval football ground located adjacent to Mersey Street. (90 degrees, 210 degrees and 330 degrees.)

[119] Each mast has a 360 degree coverage with three primary directions (or Azimuths). By way of example, Central Station (No 1) mast has the primary directions at 60 degrees (north-east), 180 degrees (south) and 300 degrees (north-west). Each Azimuth has an approximate 120 degree coverage. Using this example the 60 degree Azimuth will have an approximate range of 0 degree to 120 degrees. Each mast will have its own orientation with three Azimuths but not necessarily at 60 degrees, 180 degrees and 300 degrees. When describing the location of the masts at [118] above I have referred to the three Azimuth directions applicable to each mast.

[120] In simple terms if a mobile telephone is used to telephone or message or it otherwise sends or receives data it will use the best available mast cell site and the data received by the mobile telephone company will be able to identify that mast cell site, the Azimuth used by the mast cell site, with an additional reference number depicting what generation of mobile telecommunications technology has been used - 2G, 3G and so on. For example, a reference Central Station Az 60 SAC 17018 indicates that the Central Station mast Azimuth pointing north-east has been used by a telephone to receive or send data by 3G technology.

[121] The prosecution has adduced this evidence in an attempt to place a location of certain telephone handsets at a particular time. There are well-established and recognised deficiencies in this process, and they were candidly acknowledged by Paul Hope during his evidence. I will deal with these in more detail below in my consideration of the evidence but in general terms it is impossible to pinpoint a particular device with accuracy and a 150 metre vicinity is regarded as an acceptable margin of error. The built environment can obstruct radio frequencies and building materials can impact results. The 120 degree arc is only an estimate, and the margin of error can extend or reduce the width of the arc. The number of users within the arc can impact results. The proximity to the mast may not necessarily ensure that that mast is regarded as the best mast. The greater the number of masts in an area the greater the complexity.

[122] Paul Hope conducted a radio frequency surveying exercise on 9 March 2020, 13½ months after the death of Ian Ogle. His survey is only accurate as at the date it was conducted. He acknowledged that networks could have changed in the interim period, or that there may have been alterations in the built environment which could have impacted on results. He did say that he was not aware of any major events that

would have impacted on the results, and it was not put to him in cross-examination that there had been. He acknowledged that the 13 month time difference provided a measure of caution to the exercise of replicating coverage on 27 January 2019.

[123] The radio frequency surveying exercise involved placing the recording device within a car, driving throughout the designated area and storing the results of the radio frequency.

[124] Paul Hope was content with a suggestion that his report, and any conclusions drawn from it, should come with a “global health warning.”

Cell Site analysis of mobile telephone locations between 21:00 and 21:30

[125] I have chosen these times as the recorded time of the vehicle leaving Wye Street was 21:09, the Prince Albert Bar incident occurred at 21:15 and the murder occurred at 21:20.

[126] I have set out how Paul Hope conducted his survey relating to usage of the various azimuths serving this area of east Belfast. When this is cross-referenced with the data provided by the providers in relation to the telephones associated with the individuals who were of interest to the police investigation and are mentioned at paras [42] and [43] and later at [142] (set out in exhibit LMCC1a), the results in respect of the telephones associated with Sewell, Ervine and Rainey are set out in an exhibit prepared by Paul Hope - ‘PSH2 - Cell Site Analysis Maps V2.’ This exhibit runs to 19 pages, and it would be difficult to describe the results in narrative form. A further exhibit PSH 5 sets out chronologically from 20:31 the data in respect of the telephones associated with Sewell, Ervine and Rainey. By utilising all the information from these exhibits, a picture emerges concerning the extent of the location where a particular telephone could be located at the time the telephone either sends or receives data.

[127] The data relating to Rainey and Ervine as set out in exhibit PSH 5 is summarised in the following paragraphs. I refer to the cell site by its name with the relevant azimuth in parenthesis.

[128] Rainey’s telephone utilised Ballymacarrett 2 (180) at 21:08 (twice for DDR) and Central Station (60) at 21:08 (once for DDR). It utilised Ballymacarrett 2 (180) at 21:11 (four times for DDR and three times for data). At 21:12 it utilised Ballymacarrett 2 (180) once for data, then East Belfast Constitutional Club (330) three times for DDR and once for data and Central Station (60) once for DDR. At 21:22 and 21:23 it used Central Station (60) for DDR.

[129] Ervine’s telephone utilised Victoria Channel (60) at 21:00, three times for DDR and once for data. At 21:01 it used Ballymacarrett 2 (180) twice, once for data and once for DDR. At 21:02 it was used again four times for one text message, twice for DDR and once for data as was East Belfast Constitutional Club (330) three times for DDR and once for data. Ballymacarrett 2 (180) was used three times at 21:04, twice

for DDR and once for data and 14 times at 21:05, seven times for DDR, five times for data and twice for voice. At 21:08 Ballymacarrett 2 (180) was used four times (twice for DDR and twice for data) and Central Station (60) was used twice (once for DDR and once for data). At 21:09 Ballymacarrett 2 (180) was used 10 times (six times for DDR, three times for data and once for a forwarded call). The East Belfast Constitutional Club (330) was used once at 21:10 for data. At 21:23 Mountpottinger East (90) was used for DDR and at 21:24 Mountpottinger East (90) was used five times (twice for data, twice for DDR and once for voice). Central Station (300) was used once for data and Ballymacarrett 2 (180) was also used once for data.

[130] For completeness I set out the data extracted from exhibit LMCC1a relating to Spiers's telephone during this period. This data is not as extensive and only relates to when the telephone is used. At 21:02 it utilised Glentoran Football Club (210) for an SMS.

Subsequent events in the vicinity of Wolff Close and Pitt Place

[131] Camera M at the Ballymac Community Centre recorded a person running along the edge of the Pitt Memorial Park towards Frazer Pass at 21:29:11.

[132] Island Road leading on to Ballymacarrett Road runs to the north of this area and a dark coloured car was captured on Camera N driving along it at speed towards Newtownards Road at 21:38:34. Cass was of the view that because of the lack of focus and partial obstruction it was not possible to identify the vehicle. It was however similar to a second-generation BMW 1 series Mark 2, a third generation Seat Leon or another similar vehicle.

[133] At 21:39:21 a dark coloured car which had been driving along Newtownards Road country ward turned left into Pitt Place and parked up at a location similar to the car seen leaving Pitt Place at 20:47:30 (Camera P). A person exited the car, and the lights flashed before that person walked towards the rear of houses on Wolff Place, which backs on to Pitt Place. Cass could not make a positive identification because of the quality of the images.

[134] Five and half minutes later at 21:45:16 Camera P picked up the car's lights flashing again and a person emerging from the rear of Wolff Place, getting into the car, the car starting and driving a short distance round a corner into a perpendicular part of Pitt Place. A person emerged from that area a short time later and moved back towards the rear of Wolff Place. Cass was of the view that because of the poor lighting and lack of detail it was not possible to identify the vehicle. It was, however, similar to a Mark 6 or Mark 7 Volkswagen Golf, a second-generation BMW 1 series Mark 2 or a third generation Seat Leon.

[135] At 21:50 Constable Oswald located a Seat Leon registration JGZ 7406 parked on the perpendicular part of Pitt Place partially on the pavement facing inwards and in the direction of the playground.

[136] Camera O on Harland Walk looks down into the front of Wolff Place. At 22:00:40 a male was seen coming out of a house on the left near the far end of Wolff Place, and he turned right and walked towards the camera. He was wearing a light hooded top, with light shorts and what appeared to be flip flop type footwear. In addition to O, there is a group of cameras on Frazer Pass (Cameras P, Q and D) as well as Camera M further down and at 22:01:41 to 22:02:07 this male was seen turning right from Wolff Close into Harland Walk and then straight on into Frazer Pass. Moving into Frazer Pass he crossed over Pitt Place, and he was seen looking right where a police vehicle is parked on Pitt Place. After crossing Pitt Place and once he had reached the building line at 1 Frazer Pass he broke into a jog moving in an easterly direction.

Subsequent events at Wye Street and Frome Street

[137] Cameras B and C on Frome Street picked up activity from 22:21:51. These cameras are motion activated and point up and down Frome Street. In some instances, the lack of motion fails to trigger the recording device. At this time a light coloured saloon car turned right out of Ina Street into Frome Street and towards the cameras. It parked on the left side of Frome Street at its junction with Wye Street, and a male wearing a light hooded top with light shorts exited the car on the near side. He pulled his hood up and walked diagonally across to 14 Wye Street. The driver also momentarily got out of the car before returning into it.

[138] At 22:24:08 a male walked along Frome Street and stopped at the door to 14 Wye Street. The recording stopped at this point. At 22:28:49 a male walked along Frome Street, appeared to acknowledge the driver of the white car parked on the left. He went to the door of 14 Wye Street but did not gain entry and started to walk back. At this point the white car drove off turning left in to Wye Street towards Dee Street. The door of 14 Wye Street then opened, and the man turned round and walked towards 14 Wye Street.

[139] At 22:32:48 a man exited 14 Wye Street wearing a light hooded top with light trousers. He carried a bag and walked towards Frome Street. Two people stood at the door of 14 Wye Street. The man ran up Frome Street and a light coloured saloon car drove down Frome Street, picked up the man who got into the front passenger seat and the car drove off turning left into Wye Street towards Dee Street.

[140] A person walked along Wye Street from the city end at 22:40:27 and turned right into 14 Wye Street where the person had the door opened for him and the person entered. A person exited 14 Wye Street at 22:42:09 and turned left along Wye Street.

[141] At 02:34:43 on 28 January 2019 a light coloured saloon car drove slowly along Frome Street turning left into Wye Street towards Dee Street. It passed out of camera view. About 20 seconds later a person walked from that direction, turned right into Frome Street and leaned over the fence of 19 Frome Street to pick up a bag. There is no record of how this bag was deposited in this location. It was not present

in earlier camera recordings from Camera C, but it appears to be present at 02:16:30 on 28 January 2019. Two other people then appeared from the direction that the car turned and all three then walked to 14 Wye Street. One appeared to be wearing light coloured shorts.

Telephony after the attack of Ian Ogle at 21:20 on 27 January 2019

[142] As referred to above (para. [65]) the last contact before the killing of Ian Ogle (which occurred between 21:19:31 and 21:20:01) made between the telephones associated with Brown, Sewell, Rainey, Ervine and Spiers was at 21:08:01 (Brown to Rainey). I now set out all telephony involving these five men with each other and with other relevant people. At paras [42] and [43] above I listed a number of people with the last three digits of their telephones. I now expand that list to include others referred to in this section of the judgment. Again, for convenience and for privacy reasons I have only shown the last three digits of the 11 digit numbers:

- (a) Morrison 352
- (b) Haire 099
- (c) McCartney 902.

[143] As at 27 January 2019, the subscriber details for telephone 352 were Morrison's.

[144] As at 27 January 2019, the subscriber details for telephone 099 were Haire's.

[145] As at 27 January 2019, the subscriber details for telephone 902 were McCartney's.

[146] I now list the contact after 21:08:01:

- (a) 21:20:18 Morrison to Brown call lasting two seconds
- (b) 21:24:08 Ervine to Kirkwood call lasting six seconds
- (c) 21:27:49 Morrison to Brown call lasting 18 seconds
- (d) 21:47:59 Ervine to Kirkwood call lasting 21 seconds
- (e) 21:52:39 Spiers to Brown text message
- (f) 21:54:24 Brown to Spiers text message
- (g) 21:57:40 Kirkwood to Ervine call lasting 15 seconds
- (h) 22:00:30 Spiers to Brown text message

- (i) 22:01:19 Brown to Morrison call lasting two seconds
- (j) 22:02:35 Spiers to Brown text message
- (k) 22:02:42 Brown to Morrison call lasting four seconds
- (l) 22:03:27 Brown to Morrison call lasting two seconds
- (m) 22:04:33 Brown to Morrison call lasting one second
- (n) 22:05:20 Brown to Haire call lasting 16 seconds
- (o) 22:05:52 Brown to Rainey call lasting 42 seconds
- (p) 22:06:55 Brown to Ervine call lasting 25 seconds
- (q) 22:12:47 Brown to Haire call lasting 12 seconds
- (r) 22:15:34 Brown to McCartney call lasting one minute three seconds
- (s) 22:17:36 Brown to Rainey call lasting eight seconds
- (t) 22:17:36 Sewell to Brown call lasting one minute 34 seconds
- (u) 22:19:22 Brown to Rainey call lasting 11 seconds
- (v) 22:34:57 Brown to Ervine call lasting two seconds
- (w) 22:35:16 Brown to Spiers call lasting 30 seconds
- (x) 22:35:50 Morrison to Brown call lasting one minute two seconds
- (y) 22:46:18 Kirkwood to Ervine call lasting one second
- (z) 22:47:49 Morrison to Brown call lasting two seconds
- (aa) 22:55:38 McCartney to Brown call lasting two seconds
- (bb) 22:56:00 Morrison to Brown call lasting two seconds
- (cc) 23:36:35 Brown to McCartney call lasting one minute 18 seconds
- (dd) 23:38:52 Brown to McCartney call lasting one minute 22 seconds
- (ee) 23:57:09 Brown to McCartney call lasting one minute forty one seconds.

[147] After midnight on 27 January 2019 Brown, McCartney and Kirkwood remained in contact for approximately 25 minutes but the individual contacts are not relevant.

Last recorded usage of telephones attributed to Brown, Sewell, Rainey, Ervine and Spiers

[148] The last recorded usage of the telephones attributed to Brown, Sewell, Rainey, Ervine and Spiers is as follows:

- (a) Brown 038 on 28 January 2019 at 00:08:26
- (b) Sewell 763 on 27 January 2019 at 22:20:35
- (c) Rainey 614 on 28 January 2019 at 16:48:20
- (d) Spiers 502 on 27 January 2019 at 22:02:35
- (e) Ervine 290 on 27 January 2019 at 22:10:15.

[149] Paul Hope, whose evidence in respect of cell site analysis is referred to above, said that a telephone's inability to make or receive calls or messages or failing to register its signal can be the result of a number of events, such as loss of battery power, disconnection of the battery, and switching the handset off.

Seat Leon JGZ 7406 and its contents

[150] The registered keeper of Seat Leon JGZ 7406 is Morrison it having been transferred into her name a short period before 27 January 2019.

[151] The vehicle was seized by police. On 29 January 2019 the vehicle was searched and subjected to sampling for DNA. A white JD Sports plastic bag was found in the rear nearside footwell. It contained a pair of Nike branded training shoes, a Diesel branded hat, and bank notes totalling £1,680 in a Ulster Bank fast lodgement envelope. The laces of the right training shoe had a predominant DNA profile matching that of Brown. A blood sample was recovered from the toe area with a predominant DNA profile matching Ian Ogle. The laces and inner heel of the left training shoe had a predominant partial DNA profile matching Brown. A blood stain on the sole had a profile matching Ian Ogle. A mixed DNA profile from two individuals was obtained from the hat and Sewell's DNA characteristics were present in the mixture.

[152] Swabs were taken from the interior of the vehicle. One swab from the inner rear near side door contained a predominant DNA profile which matched Rainey. There were additional DNA components present at a low level. A calculation made with reference to the Northern Ireland population survey data shows that this finding is at least one billion times more likely to arise if the DNA profile originated from Rainey rather than an unrelated male.

[153] Another mixed DNA profile was obtained from the rear near side seat belt release mechanism. Ervine's DNA characteristics were present in the mixture, and he could have been a low level contributor. A calculation made with reference to the Northern Ireland population survey data shows that this finding is at least 36 million times more likely to arise if the DNA profile originated from Ervine and an unknown individual rather than two unrelated individuals unrelated to him.

Recovery of a baton and knife from the Connswater river

[154] On 14 February 2019 police officers recovered an extendable baton, and a knife submerged in water lying beside each other on the bed of the Connswater river approximately 25 metres to the south of the Mersey Street bridge.

[155] The baton was extended, with an orange handle and chrome coloured extension. It was bent at one of the joints.

[156] The knife was 33 cm in length with a blade 20 cm long and was 4.2 cm wide at its hilt. Dr Ingram confirmed that it was a knife that was capable of causing the fatal stab wound to Ian Ogle, as could any knife with similar dimensions. He said that in his opinion factors such as the movements of the person receiving the wound and delivering the wound, the entry and withdrawal of the knife and the clothing worn by the victim would not alter that analysis which was primarily based on the depth of the wound sustained by Ian Ogle.

[157] The knife was branded on its blade with the name 'Ernesto' and with product code 290435. Spiers lived at Flat 1, 20 Mersey Street, approximately 350 metres from the Mersey Street bridge over the Connswater river. Constable Kerr had arrested Spiers at his home on 31 January 2019 and seized an Ernesto branded knife with the product code 290435. She cannot recollect where it was located. On 3 April 2019 police returned to the home and seized three remaining Ernesto branded knives with the product code 290435 and a sharpening tool from the top drawer in a kitchen unit and a black cutting board from the third drawer down of that unit.

[158] The 'Ernesto' knife set with serial number product code 290435 comprised of five knives of differing types, a sharpening tool and a black cutting board was sold by the Lidl supermarket chain. The Lidl outlet at Connswater Shopping Centre sold 48 sets between 8 February 2018 and 11 March 2018. The set was also for sale in other Lidl outlets in the Belfast area and was available for sale in several mail order outlets, including the widely used Amazon outlet. Police enquires suggested that over 100 of the Ernesto knife sets were sold by Lidl in the Belfast area.

[159] The knife recovered from the Connswater river was described by Kevin Harvey, forensic scientist, as one being from the similar set to knives recovered from Flat 1, 20 Mersey Street on 31 January 2019 and the three knives recovered from the same address on 3 April 2019.

[160] The knife recovered from the Connswater river, the four knives, the

sharpening tool and the cutting board when combined comprise the knife set marketed and sold by Lidl and other outlets.

Brown's, Ervine's and Rainey's departure from Northern Ireland

[161] Jason Agnew received a telephone call from his cousin Rainey mid-morning on 28 January 2019 requesting that he do him a favour and give him a lift to Dublin airport. Rainey had made similar requests for lifts to Dublin airport and Belfast International airport, sometimes at short notice. Rainey rang back in the afternoon and asked that he be picked up on Mersey Street close to the Oval Football ground at 18:30. When Agnew arrived, Brown was with Rainey, although there had been no prior mention of him travelling. Agnew then drove to Dublin airport and left Rainey and Brown off.

[162] Rainey's telephone 614 was used at 13:00:59 on 28 January 2019 to make a call to the UK 0800 service for Aeroflot, the Russian state airline. It lasted two minutes 25 seconds.

[163] At 19:54:44 on 28 January 2019 CCTV images from Dublin airport capture Brown and Rainey entering the terminal building. Aeroflot records indicate that both purchased tickets using cash and boarded a flight to Moscow (flight number SU2591) that day, and then an onward flight to Bangkok in Thailand (flight number SU6275). CCTV images capture both passing through the boarding area at Dublin airport.

[164] On 6 February 2019 Brown arrived at London Heathrow airport on a flight from Bangkok and was arrested by police. Brown was carrying a telephone with a Thai SIM card and a Thai number.

[165] On 3 March 2019 Rainey arrived at Manchester airport travelling on a flight from Bangkok. He was arrested by police and cautioned. Whilst under caution he was asked if he had any baggage, and he is reported to have stated that he had no baggage as he kept his clothes at his girlfriend's house in Thailand and that he had no plans to travel to Belfast as he thought he would be arrested in Manchester.

[166] On 28 January 2019 Emily Jenkins, a half-sister to Ervine received a telephone call from Paula Jackson, Ervine's girlfriend. Jackson said that Ervine needed a lift to the boat as he was planning to work in Scotland for a few days. Jenkins said that this request was unusual. She was told to pick Ervine up at Humber Court about 10:30. (Humber Court is located off Dee Street adjacent to its junction with Mersey Street.) When Jenkins arrived Ervine was with a male who she did not know, and he got into the vehicle and travelled to Larne. That male was Edgar. On the journey, Jenkins said that Ervine was "quieter than usual" and he told her that he was going to Scotland to work for a few days.

[167] They travelled to the P&O Larne - Cairnryan ferry terminal building arriving at 11:27. Edgar exited the car from the rear off-side door and entered the terminal

building alone. He is seen approaching the ticket desk and appeared to buy a ticket handing over cash. He then returned to the car and Ervine got out of the front passenger door, hugged Jackson, and both males walked into the terminal building. Ervine approached the ticket desk and appeared to buy a ticket handing over cash. Both men undertook the journey to Scotland as foot passengers.

[168] On 31 January 2019 a £200 withdrawal was made from Ervine's bank account from a location at Kilwinning, Ayrshire in Scotland. He is seen passing through Belfast Stenaline terminal having completed a ferry journey from Cairnryan to Belfast on 3 February 2019 at 17:56.

[169] On 4 February 2019 Ervine presented himself voluntarily to the police and he was arrested.

The police interviews of Rainey, Ervine and Spiers

[170] After arrest, all three defendants were interviewed by police. They were correctly cautioned as to their right to remain silent and as to the circumstances in which inferences could be drawn if they failed to mention something which they later relied on in court. The interviews were conducted in the presence of solicitors. No issue is taken by any defendant concerning the conduct or content of the interviews.

[171] Rainey, having been arrested by police at Manchester Airport on his return from Thailand on 3 March 2019 was interviewed by police on six occasions on 4 and 5 March 2019. At the commencement of the final interview at 12:42 on 5 March 2019 Rainey was asked:

“Q. Could I ask your address please Glen?”

A. 10 McArthur Court.”

Towards the end of that interview after a series of “no comment” answers, Rainey's solicitor asked him a question:

“Q. Just at this stage Glen I suspect we're coming to the end of the interview process, is there anything you want to tell police?”

A. Yes I just want to clarify that I'd absolutely no involvement in the murder of Ian Ogle.”

[172] During that, and the other earlier interviews he was asked questions relating to various topics concerning the death of Ian Ogle and other related matters and to each question on these topics he gave a reply of “no comment.” As he has not given evidence before the court, no inference can be drawn from his failure to answer, and it is not necessary to make reference to the topics or questions raised by the police.

[173] After his arrest on 4 February 2019 when he presented himself to the police voluntarily, Ervine was interviewed seven times on 4 February 2019 and on 13 May 2019.

[174] He was also questioned concerning the death of Ian Ogle and other related matters. To each question he relied "no comment." As he has not given evidence before the court, no inference can be drawn from his failure to answer, and it is not necessary to make reference to the topics or questions raised by police.

[175] At the commencement of the seventh interview at 15:00 on 13 May 2019, a written statement signed by Ervine was handed to police and read to the police by Ervine's solicitor, in Ervine's presence. It stated "I, Walter Alan Ervine, date of birth 14/05/81, am aware that I am under caution. I deny that I was involved in the murder of Ian Ogle on 27/01/19."

[176] Spiers was arrested on 31 January 2019, and interviewed by police on nine occasions, on 31 January 2019, 1 February 2019, 29 May 2019 and 19 June 2019. At the commencement of the first interview at 22:19 on 31 January 2019, a written statement signed by Spiers was handed to police and read to the police by Spiers's solicitor, in Spiers's presence. It stated "I, Robert Spiers, date of birth 20/01/83, aware that I am under caution and deny that I'd any involvement in the murder of Ian Ogle on 27/01/19."

[177] Spiers gave certain replies to some questions asked by the police and to others he replied, "no comment." As he has not given evidence before the court, no inference can be drawn from his failure to answer, and it is not necessary to make reference to the topics or questions raised by police.

[178] During his interviews he did make some replies to questions. I am setting out below some of these questions and replies:

First interview 22:19 on 31 January 2019:

"Q. What about mobile phones?

A. No comment. I don't have a mobile phone.

Q. You don't have a mobile phone?

A. No

Q. Do you use any mobile phones?

A. No

Q. How do you contact your mates?

A. Well I don't have one."

The police returned to this topic later during the interview:

"Q. Did you lend it to someone else? ['It' is a reference to a mobile phone]

A. No I don't, I told you I don't have a phone

Q. Did you never have one?

A. No."

[179] When asked by the police as to his whereabouts when police were trying to locate him in the 48 hours after the murder of Ian Ogle, Spiers stated:

"Q. I'm not sure if they called at Newcastle Street? [Spiers's girlfriend lived in Newcastle Street]

A. Well in fairness you know I, every morning I would go to my own house every morning to check for mail ..."

[180] During the second interview at 11:22 on 1 February 2019, the police raised the topic of mobile phones again:

"Q. Okay amm would your ah, any of these gentlemen that we've asked you about have your telephone number in their phone?

A. As I stated to you I think it was in the last, last interview, Andrew was it?, that I don't have a mobile phone.

Q. You don't have a mobile phone?

A. I don't have a mobile phone.

Q. Have you ever had a mobile phone?

A. Well a long time ago.

Q. Well what a couple of years ago? Last year?

A. I don't know I can't, I can't recall."

[181] During the third interview at 13:36 on 1 February 2019, Spiers was told that the police had seized Haire's mobile phone which had a contact called 'Spiersy' with a number 502. Spiers was asked about the use of this name:

"Q. Is it something you're called by your mates or?

A. Well obviously my name's Spiers so.

Q. Yeah?

A. Occasionally you would get that but.

Q. Yeah?

A. I'm also called Robert."

and then about the number:

"Q. Do you recognise that mobile number, it's one that I'd remember easier than some?

A. To be honest with you as I said I haven't had a phone so I couldn't tell yea."

[182] The topic concerning the mobile phone was raised again during the fourth interview at 15:58 on 1 February 2019:

"Q. We asked you about that as well at the end of the previous interview and you maintained that you didn't have a mobile phone?

A. Neither I do.

Q. And but nobody bought one or gave one to you?

A. No."

When asked about the purchase of a top-up for the 502 phone:

"Q. Yes, it is a cash transaction and it's for £10 and it was for an O2 top-up. Is your phone O2 or Vodafone or?

A. As I say I don't have a phone."

and later:

“Q. Is that you, do you use a mobile phone, or you just don’t own a mobile phone?”

A. I don’t use a mobile phone, and I don’t have a mobile phone.”

When told that the police had found mobile phones in his girlfriend’s house, Rainey replied:

“Q. Well, we have found mobile phones in the house in Newcastle Street?”

A. Quite well possibly you could have but I can assure you that none of them are mine ah cause as I say I don’t have a mobile phone.”

When asked about using his girlfriend’s mobile phone:

“Q. Do you ever use her phone?”

A. Never, I’ve no reason to use any phone I don’t need a phone, I don’t, I don’t have a phone cause I don’t want a phone, know what I mean.”

[183] When asked to comment on the fact that “Johnny Brown and Spiersy” are in touch with each other a great deal just before the murder and just after, Spiers replied:

“A. As I said love you know there’s multiple Spiersys out there you know. I’m not the only (inaudible) Spiers on on on the planet or in East Belfast you know.”

[184] When questioning resumed at 11:38 on 29 May 2019, during the seventh interview, the police invited Spiers to tell them anything about his involvement in the murder of Ian Ogle. He replied in the following terms:

“A. Eh basically just to be honest with you you know going back to the first, was it the first summary I think it was it, when you asked me about the likes of did I know these people and stuff. Well obviously well, certain people being charged you know em there’s no doubt, there’s no doubt obviously that you know I do know these people. You know what I mean, and you know I wouldn’t obviously have been with them on a regular basis or been in regular contact with them either, you know obviously with drinking in one bar you know there would have been cross references you know speaking to

people and talking to them and stuff like that you know in regards to the vehicle at the time that was disclosed to me or that you put to me that was identified. You know Jonathan and me were obviously friends you know what I mean so as much as I didn't comment on it in the, in the first interview you know I'm not disputing that obviously I'd never been in it so I would just like to verify that till you now, know what I mean just to let you know. Know what I mean but other than that there you know I've nothing other than that there to inform you about."

[185] During the seventh interview Spiers stated that his "memory's not the best" stating that he had been addicted to alcohol and drugs. He stated that if the police check his medical records they would find out about his medical history. Spiers has not provided his medical records to the police or to the court, nor has he alluded to the relevance of his health in his defence statement.

[186] The police returned to the topic of the mobile telephone:

"Q. Do you still not have a mobile phone?

A. Still don't have a mobile phone.

Q. Ok and again did you have a mobile phone at the time?

A. Oh, in regards to that question I can't recall exactly, you know I would probably need to listen to the tapes. You know what I mean but you know eh I think if I remember correctly as I said my memory's not the best but you know the way it was put to me was at the time if I can remember I was answering the question when I was asked do you have a mobile phone and I said no because I didn't know what I mean so I never had a mobile phone at the time of being interviewed."

[187] Spiers was then asked about his association with Brown and Sewell:

"Q. What can you tell us about Jonathan Brown?

A. Just like eh just like the rest of them you know associated friend know what I mean, we drunk in the same bar, other than that I've nothing else to say.

Q. Mark Sewell then, what about him, do, did you

know Mark Sewell at the time, January this year?

A. Well not necessarily January this year

Q. Well?

A. It's irrelevant in my eyes you know how long I've known him for you know but as I've said at the start I am aware. I have been aware and I'm making you aware that you know eh they're associated friends."

[188] Spiers was then questioned about the Seat Leon car JGZ 7406 and his whereabouts on 27 January 2019:

"Q. You mentioned you knew Jonathan Brown had access to it or you had you been in the car with Jonathan Brown previously?

A. Well as I said to you at the start of the interview you know there's, there's no doubt that you know not only we're associated friends but yes on on previous occasions you know I have been in the car yes there's no doubt of that.

Q. That's OK. Were you in the car on Sunday the 27th of January?

A. No

Q. OK where were you on Sunday the 27th of January?

A. To be honest with you, I couldn't honestly tell you mate, know what I mean. My memory's not the best as I said so I'm not going to put myself in a position of saying something that may be I can't ..."

[189] Later in the interview, Spiers was asked about his knowledge about the assault on Neil Ogle:

"Q. When were you made aware of the assault on Neil Ogle?

A. Neil Ogle?

Q. Yeah?

A. Never knew there was an assault made on Neil Ogle.

Q. Oh, you didn't know?

A. No."

[190] Towards the conclusion of the seventh interview the police's questioning related to their assertion that it was Spiers who had the knife and used it to stab Ian Ogle, and about which Spiers declined to comment. The eighth interview commenced at 14:06 on the same day with the police again returning to this topic, with Spiers declining to comment although he later denied this in the following terms:

"Q. So basically, so this person's brought this knife, murdered Ian Ogle and that's you isn't it Robert?

A. No."

[191] The police then questioned Spiers about the Ernesto branded knife set found at his house on the 31 January 2019 and 3 April 2019 and the Ernesto knife found in the Connswater River on 14 February 2019. A photograph (in album exhibit DT 5) of the single knife seized by Constable Kerr (exhibit HK 1) on 31 January 2019 was shown to Spiers and he was asked:

"Q. Do you recognise that knife?

A. There was a lot of things that were removed from my house to be honest with you you know. I can't recall what was taken.

Q. OK but you recognise this knife? Do you remember purchasing it or who purchased it?

A. See to be honest with you I, I've had several people in and out of my house living with me over the years and you know between cutlery, and you know other household items you know, I couldn't tell you you know who purchased it.

Q. My colleague's asked you do you recognise the knife?

A. To be honest with you I can't remember what, what was in the house."

[192] Spiers was then shown a map of the area including his house at 20 Mersey Street and the Connswater River. He was asked:

“Q. This is the Connswater River OK? And there’s a bridge over here OK? Do you ever use this bridge?

A. Very rarely no. I, I, I don’t go out of the house to be honest with you.”

[193] Spiers was then shown various photographs from an album (exhibit DT 4) showing the knife and baton lying in the Connswater River and asked:

“Q. These are the weapons we believe were used in the attack and the murder of Ian Ogle OK? And they’re found on 14th of February this year in the Connswater River OK? Did you put these weapons there?

A. No, not at all.

Q. Robert OK, do you know who put those weapons there?

A. No.”

[194] Spiers was then shown a photograph of the Ernesto branded knife recovered from the river on 14 February 2019 and asked did he recognise it and whether it was from his home, and he replied, “no comment.” He was then asked if he recognised what was the complete set of knives, seized by police on 31 January 2019, 14 February 2019 and 3 April 2019, and he again replied, “no comment.”

[195] He was then asked:

“Q. Who has access to your kitchen Robert?

A. See to be honest with you mate let me tell you something this is nothing to do with me whatsoever.

Q. Well then tell?

A. Know what I mean, and I know what it looks like, I know what, I know the way you’re trying to put it across you know what I mean but I can assure you this has absolutely nothing to do with me know what I mean. Now see in regards to.

Q. You can see where this going though can't you Robert?

A. Aye no I can see where you're trying to put, put it into perspective as to where it's going but I ..

Q. But you can see how it looks then?

A. Oh, aye well from what you're trying to put on me you know."

Later the police asked:

"Q. I want you to tell me how the murder weapon police believe was used in the murder of Ian Ogle ... is missing from your house OK ... and is found in the Connswater River?

A. I couldn't possibly give you an explanation for that Detective you know what I mean. My, as I've said before, my house is like a revolving door you know what I mean. I've I'm constantly off my head, there's people in and out of my house on a regular basis. I've. I've been renowned, I've been know, known to, to go out and maybe not come home for a few days and leave the house open you know what I mean."

[196] On being asked about the purchase of the set of knives he replied:

"A. Well in my defence you know I can't comment on it, you know as I've said I've had several girls living with me, I've had people coming in and out of the house buying me gifts, I can't determine whether they were, they were give to me as a set or whether they were brought in individually or where they came from I just can't recall it."

[197] At the conclusion of this interview Spiers was asked by police -

"Q. Tell us the truth?

A. I am telling the truth. I've nothing to say to you about it know what I mean. I mean you know if you, if you reflect back to my, have, have you looked at my medical records by any chance? No

Q. No

- A. No, well I suggest that you do because see maybe a week or two weeks or whatever the scenario was prior to this I'd been in and had [surgery] which, which you know never mind the fact that I'd also been admitted to hospital with a knee cartilage problem on my right knee know what I mean which I also later at a later stage went in to get an operation you know what I mean so you know if you think that I'm Superman or whatever way you want to put it and you think that I'm capable of running all these distances and all this, that and the other you know then that's fair enough but I can assure you I wasn't."

[198] The final interview with Spiers took place on 19 June 2019 at 12:40. He was asked questions concerning mobile telephone 502, the top-up transaction on 7 January 2019 and whether he owned a coat with a fur-trimmed hood seized by police. He replied "no comment" to the questions.

The failure of each defendant to give evidence

[199] At the conclusion of the prosecution case and after I had refused the applications on behalf of each defendant that they had no case to answer, I addressed the counsel for each defendant in turn in the following terms:

"Have you advised your client that the stage has now been reached at which he may give evidence and, if he chooses not to do so or, having been sworn, without good cause refuses to answer any question, the court may draw such inferences as appear proper from his failure to do so?"

[200] Mr Berry KC for Rainey said that he had advised his client. Rainey declined to give evidence and did not call any evidence.

[201] Mr Weir KC for Ervine also said that he had advised his client. Ervine declined to give evidence and did not call evidence.

[202] Finally Mr Mallon KC for Spiers said that he had advised his client. Spiers also declined to give evidence and did not call evidence.

Core legal principles

[203] I remind myself of the following core legal principles relating to criminal trials:

- (a) The prosecution must prove the case against each defendant. A defendant is not required to prove anything.
- (b) I must be satisfied beyond reasonable doubt of the guilt of a defendant, in other words I must be firmly convinced of their guilt before I can convict.
- (c) I must look at the whole of the evidence and the case against and for each defendant separately.
- (d) I can draw inferences based on evidence I consider to be reliable.

[204] The case against each defendant is circumstantial in nature. I remind myself of the words of Pollock CB in *R v Exall* [1866] 4 F & F 922 at 929:

“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 breaks, the chain would fall. It is more like the case of a rope comprised 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 three taken together may create a conclusion of guilt with as much certainty as human affairs can require or admit of.”

[205] I acknowledge that circumstantial evidence must be examined with great care for a number of reasons: firstly, the evidence could be fabricated, although that is not suggested or apparent in this case; secondly, to see whether or not there exists one or more circumstances which are not merely neutral in character but are inconsistent with any other conclusion than that the defendant is guilty. This is particularly important because of the tendency of the human mind to look for and often to slightly distort facts in order to establish a proposition, whereas a single circumstance which is inconsistent with the defendant's guilt is more important than all the others because it destroys any conclusion of guilt on the part of the defendant.

[206] None of the defendants has given evidence. I remind myself that that is their right. They are entitled not to give evidence, to remain silent and to make the prosecution prove their guilt beyond reasonable doubt.

[207] Two matters arise from their not giving evidence. The first is that I try this case against each defendant according to the evidence, and none of the defendants has given evidence to undermine, contradict or explain the prosecution evidence. The second is that I may draw such inferences as appear proper from their failure to do so. Although each defendant through their counsel invited me not to hold the

failure against them, no evidence has been placed before me upon which I can make such decisions.

[208] Should I decide to draw inferences from their failure to give evidence it will be on the basis that given the case against each defendant I would have thought that that defendant should have given evidence to give an explanation for or an answer to the case against him.

[209] I can only draw such inferences if I think it is a fair and proper conclusion and I am satisfied that the prosecution's case is such that it clearly calls for an answer and, further, that the only sensible explanation for a defendant's silence is that he has no answer, or none that would stand up to examination.

[210] Finally, I may take it into account as some additional support for the prosecution's case against that defendant, but I cannot find any of the defendants guilty only, or mainly, because that defendant did not give evidence.

The murder count on the indictment

[211] The defendants are jointly charged with the murder of Ian Ogle. To be guilty of murder it must be proved that a person has killed another person and that he either intended to kill that person or to cause that person really serious bodily injury. Brown and Sewell have already pleaded guilty to that charge on the basis that they killed Ian Ogle with an intention of causing him really serious bodily injury.

[212] The evidence clearly shows that five men walked along Albertbridge Road towards Ian Ogle at the Cluan Place junction. By their admissions Brown and Sewell have acknowledged that they were part of the group. The prosecution case is that Rainey, Ervine and Spiers made up the rest of the group. The evidence of Senbrook and Gunning was that it was a ferocious attack on Ian Ogle with each member of the group participating. The attack was also recorded on CCTV although the images are not particularly detailed. The cause of death was determined to be the stab wound to the chest, although that was one of 11 stab wounds. In addition, there was extensive bruising and other injuries. These included thirty seven bruise sites, seven abrasion sites, one laceration and one puncture wound. The attack lasted for about 30 seconds and therefore involved multiple blows in addition to the 11 stab wounds.

[213] The prosecution do not need to prove which of the defendants actually stabbed Ian Ogle and delivered the fatal wound. I consider that this case is not a parasitic accessory liability case which would involve consideration of the principles set out by the Supreme Court in *R v Jogee* [2016] UKSC 8. It is a classic joint enterprise case. The man who used the knife may have direct responsibility for the death, but it is clear beyond any doubt that each of the five men were involved in the attack on Ian Ogle and that each intended to cause him, at the very least, really serious bodily injury. One used a knife, one used a baton, and the others used fists and/or their feet to attack him. This is not a case of the group forming an intention to commit one crime (eg a common assault) but that one of the group produced and

used a knife with an intention to commit another crime such as wounding with intent or murder. This was not a case of a crime 'gone wrong' and therefore *Jogee* does not apply (see *R v Wallace* [2017] NICA 57 and *R v Smith* [2023] NICA 31).

[214] Should I be wrong in my assessment that *Jogee* does not apply then the facts of this case are such that the four men in the group who did not use the knife are still equally guilty. They would be guilty as the prosecution have clearly proved beyond reasonable doubt that each of the other four, as demonstrated by their conduct, intentionally assisted or encouraged the one man with the knife intending that he would do so with the intention that Ian Ogle should die or suffer really serious bodily injury with that man also in fact having that intention to kill or cause really serious bodily injury (see *R v Noble* [2016] EWCA Crim 2219 and the commentary in *Blackstone Criminal Procedure 2025* at para A4.11).

[215] The issue is therefore straightforward – Can the prosecution prove beyond reasonable doubt that Rainey, Ervine and Spiers were part of the group of five men with Brown and Sewell that attacked Ian Ogle? Taking each defendant in turn, if the answers to that question is yes, then that defendant is guilty of the murder of Ian Ogle.

Consideration of the evidence

[216] I propose to set out my consideration of the evidence under certain headings. This will involve looking at the issues under each heading as it impacts on some or all of the defendants. I am however mindful of the need to look at the case against and for each defendant separately.

Identification

[217] Turning first to the potential of identification of the males seen walking towards Cluan Place. The prosecution case is that the males described by police are as follows - Male 4 is Ervine, Male 2 is Sewell, Male 5 is Spiers, Male 3 is Rainey and Male 1 is Brown. The five men are recorded on CCTV walking under a bus shelter, first towards and then away from the murder scene. Exhibit 65B shows them on their outward journey captured between 21:19:00 and 21:19:07 and on their return journey between 21:20:16 and 21:20:30.

[218] I am satisfied that these males identified as 1, 2, 3, 4 and 5 are one and the same persons on both journeys. The clothing each of the men is wearing is distinctive and different from the clothing worn by others and by comparison of images of those males on the outward and return journeys I am satisfied that the five males walking towards the murder scene and the five males walking (or running) away from the scene are the same males.

[219] Male 2 (Sewell) and Male 1 (Brown) have confessed to their involvement in the murder.

[220] Male 4 is the male who is leading the group both towards and back from the murder scene. Still images extracted from the CCTV recording and other images are set out in a compilation set out in Exhibit CS77.

[221] Male 4's clothing consisted of a blue jacket coming down to his waist. It is fully zipped up. The CCTV images do not display any facial features. It would therefore be impossible to carry out any meaningful identification based on his features. He is also wearing dark coloured tracksuit-type bottoms displaying three white parallel stripes starting at the knee and running vertically down the leg to the bottom. At the bottom the stripes turn at an angle to be near horizontal. This would appear to result from the bottoms either being too long for the wearer or lack of support at the waist. The end of the bottoms comes onto the footwear ending over at the laced part of the shoe (or where the laced part would be if there were laces). Male 4 is also wearing trainers with a grey upper and white sole, with the white sole extending round to the edge of the upper.

[222] The prosecution assert that this clothing is identical to clothing worn by Ervine on an earlier occasion that day at approximately 12:15. CCTV footage from the Russells Shop4U premises shows a male within the shop using the ATM cash machine. It is an agreed fact that a sum of cash was withdrawn from Ervine's bank account at 12:13:31 at this shop.

[223] I am satisfied that the male wearing a baseball cap and shown on the CCTV within that shop at that time (and on stills 20-37 Exhibit CS77) is Ervine. Still 23 captured at 12:13:26 shows the male adjacent to the ATM cash machine. This is five seconds from the time recorded for the cash withdrawal from Ervine's account. Ervine is wearing a blue coloured top coming down to his waist, blue coloured tracksuit type bottoms and grey trainers with a white sole. The bottoms have three parallel strips running vertically from the knee with a bend at the bottom to the near horizontal.

[224] I acknowledge that the type of clothing worn by Ervine at 12:15 is typical of leisure-type clothing worn by many males. There are no distinguishing features about the top. The tracksuit-type bottoms would be commonly worn as would the trainers with the two-tone colouring. The distinctive directional change of the three parallel stripes at the shoe could not be regarded as unique although I consider it to be unusual.

[225] My overall assessment of this evidence is that the clothing (top, bottoms and footwear) worn by Ervine at 12:15 on 27 January 2019 is similar in type to the clothing worn by Male 4 at 21:19 that evening. The distinctive directional change of the three parallel stripes on the bottoms clearly enhances the proposition that they are the same bottoms. I do not discount the possibility that Ervine changed his clothing during the day in the intervening hours, although there is no evidence presented to the court that he did. This is therefore circumstantial evidence upon which I can rely but give modest weight to.

[226] I have also concluded that based on my observations of Ervine at 12:15 on 27 January 2019 and on my own observations of Ervine in the court room he is not dissimilar in height or build to Male 4. This cannot assist in any form of positive identification, but it is not evidence that points away from Ervine's involvement.

[227] I now turn to Male 5, the third man to arrive at the bus shelter on the way to Cluan Place. The prosecution say that this man is Spiers. The prosecution have presented no evidence about clothing worn by Male 5 and comparisons with clothing worn previously by Spiers. They have attempted to suggest that the clothing has similarities to clothing worn by a person captured running along Frome Street towards Wye Street at 21:08 that evening. The suggested similarities are trousers darker in tone to the jacket with a dark stripe down the arm of the jacket, with the person wearing a scarf-type covering over the lower face.

[228] This evidence has no probative value, and I reject it in its entirety. The relevance of the time of 21:08 and Wye Street is that it may well have coincided with the group assembling at Sewell's home. However, Frome Street is one of several routes that could be taken by Spiers to get to Wye Street (even if it could be shown that he commenced his journey from his home on Mersey Street). There is no evidence that the person actually went into 14 Wye Street. The clothing comparison is of the vaguest type. This evidence is entirely speculative and is of no value.

[229] I have also concluded that based on my observations of Spiers in the court room, I consider that he is not dissimilar in height or build to Male 5. This cannot assist in any form of positive identification, but it is not evidence that points away from Spiers's involvement.

[230] I turn finally to Male 3, the fourth male to arrive at the bus shelter, the person that the prosecution say is Rainey. Male 3 is wearing a dark waist length coat which is blue in colour. He is also wearing grey tracksuit bottoms and white trainers. Stills 1 and 2 of Exhibit CS76 show Male 3 on the outward journey and Still 6 shows him on the return journey. His jacket has a small distinctive motif on the right upper chest. There is also a very small light coloured spot in the left collar area near to the centre.

[231] On 23 January 2019 at approximately 15:45 a male is captured undertaking a transaction whereby he withdrew £3,000 in cash from Rainey's bank account at the Bank of Ireland branch on High Street, Belfast. Stills 9-20 of Exhibit CS76 cover the transaction which extended over 16 minutes (15:42-15:58). The male is wearing a baseball hat, but his face is clearly seen on stills 15-19 (from the camera behind the bank teller facing the male). From my observations of Rainey in the courtroom I am satisfied that he was the man making the cash withdrawal, a fact I can safely find based on an inference that the bank teller is likely to have carried out sufficient checks to satisfy him or herself that the man was Rainey, the account holder.

[232] Rainey's jacket in the bank is a dark colour appearing to be black or grey. The jacket has a small distinctive motif on the right upper chest and a very small light

coloured spot in the left collar area near the centre. These can be seen on stills 15-19 of exhibit CS76. The imagery is clearer in this footage, as opposed to the bus shelter footage. The motif is circular in shape with four dashes at the compass points of north, east, south and west. The jacket is fully zipped up and the spot on the left collar has the appearance of a popper which could be used if the jacket had been fully zipped up and popped into a holder on the other side of the collar to make the neck area wind or waterproof. Because the collar is not closed over it is folded and exposes the popper to the front.

[233] I have considered whether this could be one and the same jacket, and if it is, whether Male 3 is Rainey. The motif and popper are similar. It is not apparent to me that the motif is a particular brand which is widely accessible and worn by the public as a whole. No evidence has been presented about this motif or any brand of clothing associated with it. The jackets are similar in style and as to how they fit the males wearing them. The colour in the two sets of images is different in the sense that although both are dark, the bus shelter images show a dark blue jacket, and the bank images show a grey or black jacket. I have taken into account that different lighting may produce different projected colours. The ambient lighting within the bank premises and surrounding the bus shelter will have been different.

[234] I also take into account the passage of time between the two events. That time was over four days in length.

[235] My conclusion about this evidence is that the jacket worn by Rainey on 23 January 2019 was a jacket with a distinctive motif and that jackets with that motif would not be commonly worn. Rainey owned that jacket, or he could readily access it. Male 3 was wearing a similar jacket which may have been a different colour or that the CCTV imagery from the two cameras produced a difference in colour. This is therefore circumstantial evidence upon which I can rely but give very modest weight to.

[236] I have also concluded that based on the recorded images of Rainey at 15:45 on 23 January 2019 and on my own observations of Rainey in the court room, I consider that they are not dissimilar in height or build to Male 3. This cannot assist in any form of positive identification, but it is not evidence that points away from Rainey's involvement.

[237] Before leaving the issue of identification and clothing, I will deal with two further issues. The prosecution have asked me to draw an inference from the evidence that the police have been unable to recover the clothing items worn by Males 4 and 3. The evidence is that despite searches of the premises associated with Ervine and Rainey that clothing has not been located. The inference being that both disposed of the items of clothing in the aftermath of the murder. This is entirely speculative, and I draw no such inference from the failure of the police to locate the clothing.

[238] The defendants have also asked me to consider the evidence that Gunning,

despite being a matter of yards from the incident did not identify any of the attackers. Gunning in his evidence relating to the 1/2 July 2017 incident said that he witnessed Ervine and Rainey (as well as Brown) as being present and participating in the disorder. His knowledge of Ervine and Rainey, and his failure to identify them therefore points away from their involvement. I reject this suggestion. Firstly, he failed to identify Brown who by his confession admits to being there and participating. Secondly, the murder of Ian Ogle was the result of a savage attack which lasted about 30 seconds, and the CCTV images reflect it was a rapid and dynamic incident. The witness statements also reflect this. In fact, Gunning's statement would appear to be less than accurate as he over-states the intensity of the assault when considering the CCTV images of it. Thirdly, the bus shelter images reflect that both Males 4 and 3 were heavily disguised with headwear and face coverings with only very narrow horizontal slits exposing their eyes. A failure to indicate a positive identification is perfectly understandable in all of the circumstances. Therefore, such a failure does not point away from the guilt of either Ervine or Rainey.

[239] Although there is no evidence to suggest that Gunning knew Spiers, I have considered that given the actual or potential association between Spiers with Brown, Sewell, Ervine and Rainey, as evidenced by the telephony and where each of them lived, that is a distinct probability. Should Gunning have known Spiers, I have considered whether his failure to identify Spiers points away from Spiers's guilt. The same three points I have referred to in relation to Ervine and Rainey also apply to Spiers. Male 5 is also wearing headwear and a scarf which completely covers his face apart from a horizontal strip for his eyes. Therefore, a failure to identify Spiers could not point away from his guilt.

Cell site analysis

[240] The evidence relating to this is summarised in exhibit PSH2 (prepared by Paul Hope) and in which he extrapolates the data provided by the telephone providers as to the relevant masts being utilised by three telephones – 763 (Sewell's), 290 (Ervine's) and 614 (Rainey's). The data relating to those telephones, and other telephones is incorporated into exhibits LMCC1a and LMCC2a. A colour code is provided to assist in the interpretation with Sewell as blue, Ervine as green and Rainey as purple.

[241] I take into account the warnings that Paul Hope gave concerning the variables that have to be applied when considering this evidence. Given the number of masts in this area, and the fact that different masts can cover the same geographic location, no degree of certainty can be applied to this analysis.

[242] My assessment is that there is insufficient evidence to place, to any accurate degree, telephones 763, 290 and 614 at any particular location at any particular time.

[243] What the evidence does show is that at or about the time of Ian Ogle's murder at 21:19:30 telephones 290 and 614 were utilising the Central Station (azimuth 60)

mast which could have been utilised by a telephone at Cluan Place. A telephone in numerous other locations in the area between Albertbridge Road and Newtownards Road in the vicinity of Templemore Avenue but also on the northern side of Newtownards Road could also use that mast.

[244] A similar analysis of other cell site evidence before and after the murder provides the same outcome. The telephones are potentially within an area which correlates to the prosecution's suggested movements of the group of men as they moved towards the murder scene and then depart from it, but it equally can place the telephones elsewhere, and some significant distance away, including areas close to the homes of the defendants.

[245] In summary, the cell site evidence in relation to Rainey's and Ervine's telephones has the potential to place them at the murder scene at the relevant time, but also to place them elsewhere. It is therefore of little probative value in proving the prosecution case against them. It, however, does not exonerate them or point away from their guilt and is merely neutral in character.

[246] Spiers's telephone (502) does not feature in Paul Hope's analysis. The masts utilised by 502 are shown on exhibits LMCC1a and 2a and 502 is only using Glentoran (azimuth 210) at 20:36, 20:46, 20:51, 20:55, 21:02, 21:14, 21:52, 21:54, 22:00, 22:02, 22:18 and 22:35. These times reflect telephone usage for calls and SMS messages and also DDR events. It uses no other mast. I consider this evidence to be also neutral in nature. Spiers's home is adjacent to this mast, and I consider that this evidence strongly suggests that the telephone 502 remained located in an area either in, or adjacent to, his home. Spiers may have been at home with his telephone, although it was not used between 21:02 and 21:52, or he may have left his home and left his telephone at his home.

[247] In my judgment in relation to Spiers's application that he had no case to answer, I erroneously made reference at [17](e) to 502 being located at various locations. This error was highlighted during final submissions in this case, and I wish now to correct that error.

[248] In conclusion, I consider that all the cell site evidence is neutral in character in respect of each of the defendants.

Wye Street

[249] The prosecution case is that the group assembled at Sewell's property at 14 Wye Street, and then used Brown's vehicle to travel to the murder scene, via the Prince Albert Bar. In submissions this is couched as a likelihood. It is not necessary for the prosecution to prove that the group did assemble at that location, or who comprised the group at that stage.

[250] The CCTV images at 20:21 show a person cycling along Wye Street and dismounting whilst the bicycle is still moving before entering 14 Wye Street. The

prosecution can prove that Erskine owned and used a bicycle at that time and on 26 January 2019 when using it, he dismounted using a similar method to the person observed at 20:21. I do not regard this evidence as probative in any way. Apart from the dismounting, there is no other evidence to suggest this man is Erskine, and I do not regard the method of dismounting to be particularly unique.

[251] A similar attempt was made to suggest that another male walking along Frome Street in the direction of Wye Street could be Spiers. For the reasons that I set out above at paras [227] and [228], I also consider that this evidence has no probative value.

DNA evidence

[252] I am satisfied that the DNA evidence indicates that cellular material from both Ervine and Rainey was located in the Seat Leon vehicle JGZ 7406.

[253] I am also satisfied that this was the vehicle that brought the group to and from the murder scene. CCTV images show four men using the vehicle at the Prince Albert Bar at 21:15. Whether a fifth man was in the vehicle and never got out or whether he entered at some point when the vehicle made the short journey from the bar along Newtownards Road and into the Templemore Avenue area where it was parked, does not really matter. The evidence of the eight witnesses who observed the group leaving the area, some on foot and some in the vehicle, is clearly inconsistent as to detail, but broadly consistent as to the scene that was unfolding. The presence of Brown's shoes with Ian Ogle's blood on the toe and sole of one of the shoes, clearly indicates that this was the vehicle used by Brown and others after the murder.

[254] I do not consider that the presence of the cellular material from Ervine and Rainey adds much to the prosecution case against either. The cellular material may well have been deposited by both when they were seated in the rear of the vehicle during those journeys. If that could be proved, then it would strengthen the case against both. However, it cannot. Leaving aside consideration of secondary or tertiary transfer (ie the cellular material transferring through other persons or objects), the time of the deposit could not be dated with accuracy. When one also considers the association between Ervine and Rainey and Brown, the presence of their DNA in the vehicle could be explained by a number of other social engagements.

[255] I reject the prosecution suggestion that the likelihood of their presence in the vehicle prior to that evening is significantly reduced as the vehicle belonged to Brown's partner and she had only owned it for a short period before the murder. That would reduce the occasions and opportunity for either to be present in the vehicle, but it would not eliminate the possibility.

[256] I, therefore, do not regard this evidence as particularly probative.

[257] Before leaving the DNA evidence I have considered the lack of any cellular material attributable to Spiers in the vehicle. This does not point away from his guilt. The lack of such evidence is neutral in character. In any event, Male 5 is the only man wearing gloves, and if Spiers is male 5, as the prosecution suggest, the opportunity for him to deposit cellular material from his touching of objects would be significantly reduced.

Motive

[258] The issue of motive relates to the defendants Rainey and Ervine. Before considering the factual background, I remind myself concerning the law in relation to motive generally. Lord Hughes in *Myers v R* [2015] UKPC 40 set out the basic principles relating to evidence of motive. At [43] he said:

“In a case of murder or attempted murder, as in most criminal cases, evidence of motive is relevant but not necessary. Often the Crown may be able to prove what happened, and who did it, without knowing why. But where there is evidence that the defendant had a motive to kill the victim, that goes to support the case that it was him, rather than someone else, and/or that he did it with murderous intent, rather than accidentally or without intent to do at least grievous bodily harm.”

[259] At para [44] of the judgment, the relevance of motive relating to the case of *Myers* was emphasised:

“[T]he evidence that there existed a feud between gangs was relevant to identity, which was the core issue in dispute. It went to show that those two defendants had a motive to kill the victims. It showed that they were members of a group which was likely to have felt aggrieved and, moreover, to have reacted by targeting the deceased on grounds of his membership of the opposing association. In each case, the evidence contributed to the proposition that it was the defendant who had done it, by supporting the other evidence that it was he who was responsible.”

[260] Given that the evidence relating to motive in this case would be considered as reprehensible, if not potentially criminal, conduct, I also bear in mind the usual warnings relating to this type of evidence. Because of other reprehensible conduct, a person is not necessarily guilty of a crime with which he is accused, and, in addition, I should not be unfairly prejudiced against him, merely because of some prior reprehensible conduct on his part (see the judgments in *R v Awoyemi* [2016] EWCA Crim 668 and *R v Sode* [2017] EWCA Crim 705 both delivered in the context of gang membership).

[261] The evidence relates to the incidents at the Prince Albert Bar on 1/2 July 2017 and later that year on the Newtownards Road in September. There were also later incidents. In the Prince Albert Bar, there was a significant pub brawl between two factions. Rainey, Brown and Ervine were present and were fighting with Ryan Johnston. Others were also involved, including Ian Ogle at a later time. During this fight Neil Ogle did not take the side of his family.

[262] Later in September, Ervine made significant threats to Vera Johnston, threatening to kill her son Ryan, telling Tori Johnston that Ian Ogle would “never walk the Newtownards Road again” and that they didn’t have a clue what was coming.

[263] This hostility between the groups simmered on as time passed. I do not consider the later exchanges were as significant as the earlier incidents, but they do reflect the ongoing nature of the animosity.

[264] There was no evidence that either Sewell or Spiers were involved in any of these confrontations. After Ian Ogle and Ryan Johnston assaulted Neil Ogle on 27 January 2019, Ian Ogle shouted to Neil Ogle that he should get “Saucy [Rainey] and Sewell”, a clear indication of Ian Ogle’s perception as to where Sewell’s true loyalties lay.

[265] At 21:15 that evening Sewell entered the Prince Albert Bar threatening Lisa Duffield and Hetty Duffield saying that they were going to get put out of the country. Three other men got out of the vehicle at the time, one of whom was identified as Brown.

[266] I am satisfied that notwithstanding the gap in time between the 2017 incidents and the murder, there is clear evidence that there was an ongoing feud persisting in the area. I do not propose to use a pejorative term such as ‘gang’, favouring instead the word ‘faction.’ One such faction involved Ian Ogle and his immediate family and their associates. The other involved Neil Ogle, Brown, Sewell, Rainey and Ervine, and probably others.

[267] I am satisfied that the evidence clearly reflects the assault on Neil Ogle as the precipitating event with the Brown faction seeking revenge against Ian Ogle and his faction. It mirrors the facts in *Myers* where there had occurred a trigger event which would have created a grievance in the faction of which the defendant was a member. Lord Hughes at [49] described this as “an important strand in the rope of evidence.”

[268] I am of the same view. The fact that Rainey and Ervine were members of a faction which included Brown, Sewell, and Neil Ogle and that faction had a motive to seek and execute revenge against Ian Ogle, is strongly supportive of the proposition that both were members of the group of five men identified in the CCTV images on Albertbridge Road.

[269] It goes without saying that evidence of association with a faction or gang on its own will never be enough upon which to base any criminal charge. The relevance is the overall surrounding circumstances. Hutton LCJ in giving the judgment in *R v McManus* [1993] NIJB 11 stated at [36] that:

“there are many cases where a group of persons are together in such circumstances that, by reason of the surrounding facts, it is entirely open to the court to draw an adverse inference against one of the group by reason of his presence with the others in the situation and in the circumstances which are proved to exist.”

[270] There is no evidence to suggest that Spiers was involved in any way in relation to the internecine dispute, and therefore this aspect of the evidence does not impact on him. I do not consider that his non-involvement in the earlier physical confrontations points away from his guilt, given his association with Brown and others, in the telephony evidence, which I will now deal with.

Telephony evidence

[271] Although there is no evidence of what was actually said or communicated by messages in the interaction between the various telephones, I consider that I can draw inferences as to the general thrust of the content.

[272] The critical evidence is not only the call records set out in Exhibit LMMC 1a but also the later Exhibit LMMC 2a, which sets out a chronology of the surrounding events and the telephony.

[273] The relevant times of the significant events on 27 January 2019 are as follows:

- (a) Ian Ogle and Ryan Johnston assault Neil Ogle at 20:45
- (b) Seat Leon leaves Pitt Place at 20:47
- (c) Seat Leon leaves Wye Street at 21:09
- (d) Seat Leon arrives at Prince Albert Bar at 21:14
- (e) Murder of Ian Ogle at 21:19.

[274] The telephony prior to 20:45 reflects contact, or in the case of a very short call, attempted contact, between Brown and Spiers (both ways), Ervine and Kirkwood (both ways), and Neil Ogle and Brown. As this was all prior to the assault on Neil Ogle this communication can be categorised as normal social communication between friends.

[275] After the assault on Neil Ogle, he made a call to Brown at 20:45 lasting 97

seconds. Ryan Johnston and McAreavey both saw him using his telephone at that time. I am satisfied that the purpose and content of that call was to alert Brown to the fact that Neil Ogle had been assaulted by Ian Ogle and Ryan Johnston. During that call Spiers sent an SMS message to Brown but that could not have been related to the assault.

[276] After Brown phoned Neil Ogle back for 43 seconds at 20:48 he phoned Spiers at 20:52 for 37 seconds. Ervine called Kirkwood at 20:52 for 178 seconds. Brown attempted to call Sewell at 20:54 and again at 20:55, before speaking to Rainey for 19 seconds at 20:55. Sewell then returned Brown's calls at 20:56 and they spoke for 31 seconds.

[277] Kirkwood and Ervine exchanged calls and an SMS text between 21:00 and 21:04. Spiers sent Brown an SMS text at 21:02 and Brown rang him back for 14 seconds at 21:04. Kirkwood rang Rainey for 65 seconds at 21:03 as did Brown for seven seconds at 21:04 and again at 21:08 for 14 seconds.

[278] The Seat Leon then left Wye Street at 21:09. The prosecution case is that at that time the group had assembled, and they were on their way to conduct the attack on Ian Ogle. I consider this time to be particularly relevant. After 21:09 there are no calls or SMS text messages passing between Brown, Sewell, Ervine, Rainey and Spiers.

[279] After what was a bout of frenetic contact between 20:45, the time Neil Ogle reported to Brown he had been assaulted, and 21:09, there was no contact between the five men for a period of 43 minutes, when Spiers sent a SMS text to Brown at 21:52. During this 43 minute period Kirkwood rang Ervine at 21:09 and sent him an SMS text at 21:12 and Ervine rang back at 21:24 (five minutes after Ian Ogle was murdered) and again at 21:47 and 21:57.

[280] I am satisfied that a strong inference can be drawn from the telephony activity and lack of activity, and then the renewed activity within the group which re-commenced at 21:52 (details of which I set out below). That inference is that the group did not need to communicate with each other as they were either in each other's company or had hatched a plan about which they did not need to communicate. Given the other evidence with regard to the movements of the vehicle, and the movements around Sewell's house on Wye Street, the most likely explanation is that they were together in that house and then in the Seat Leon vehicle.

[281] Spiers sent Brown an SMS text at 21:52, with Brown responding by SMS text at 21:54. Spiers replied by SMS texts at 22:00 and 22:02.

[282] At 22:02 Brown noticed that the police had located the Seat Leon vehicle. He attempted to ring Morrison at 22:02, 22:03 and 22:04, and then rang Haire at 22:05.

[283] Brown then rang Rainey at 22:05 for 42 seconds and Ervine at 22:06 for 25

seconds. Later he made calls at 22:12 to Haire for 12 seconds, at 22:15 to McCartney for 63 seconds, and at 22:17 and again at 22:19 to Rainey for eight seconds and for 11 seconds. At 22:17 Sewell rang Brown for 23 seconds.

[284] Brown made an attempted call to Ervine at 22:34 and telephoned Spiers at 22:35 for 30 seconds. This is the last recorded telephony contact within the group of five men. There was some other contact with others, but it is not necessary to set this out in the judgment.

[285] The telephones of the group detached from the network and, save where I have mentioned below, were not used again for any telephony purpose. Brown's telephone was detached after 00:08 on 28 January 2019, Sewell's detached from the network at 22:53, Rainey's detached from the network at 22:21, Ervine's telephone detached after 22:10 and Spiers's detached from the network at 22:40. Rainey's telephone re-attached to the network on a number of occasions – for 18 seconds at 01:42 on 28 January 2019, for the Aeroflot call at 13:00 that day and on later occasions to retrieve voice messages.

[286] None of the telephone devices were recovered by police.

[287] In addition to the inference that I have drawn about the lack of telephony during the earlier period, I have considered what inferences I can draw for the activity after the murder. After the murder, the evidence is that the group split up with at least two of the members making off on foot and the others departing in the Seat Leon vehicle. The prosecution have suggested a sequence of the movements of members of the group. I only wish to refer to two of these movements. Two men are seen running across Newtownards Road south to north at 21:28. These individuals cannot be identified, although I am satisfied they were part of the group of five. The Seat Leon vehicle returned to Pitt Place at 21:39, before being moved around the corner at 21:45 and a male exited Wolff Close at 22:00. I am satisfied that the person driving the vehicle to Pitt Place was Brown and that he was the man seen exiting Wolff Close.

[288] The telephony activity had recommenced at 21:52. This was just over half an hour after the murder, and I am satisfied that the members of the group had reached a place of perceived safety at that stage, either within their own respective homes or at other property. At 22:00 Brown became aware that the police had traced the vehicle, which contained some or all of the clothing we wore when he murdered Ian Ogle. I am satisfied that Brown's contact after that was to alert others, to attempt to evade justice, and to concoct some sort of innocent explanation or alibi. It would also have been to warn others. Amongst others, he contacted Rainey, Ervine, and Spiers.

[289] I am satisfied that a strong inference can be drawn that the purpose of the calls to Rainey, Ervine and Spiers was to alert them as to the problems each now faced, and to plan their next moves. I have considered whether or not there could be an innocent explanation for these calls, or at least one which might not be related to

the non-involvement of Rainey, Ervine or Spiers in the murder of Ian Ogle. No such explanation has been suggested. I have heard no evidence about this, and I cannot see any that could be inferred from the surrounding evidence.

[290] The final inference I draw is from the telephones falling into dis-use at this time - 22:10 (Erviné's), 22:21 (Rainey's save for occasional limited use thereafter), 22:40 (Spier's), 22:53 (Sewell's), 00:08 on 28 January 2019 (Brown's). I reject that this could happen as a coincidence. These were telephones which were used regularly up to 21:08 and were taken off the network at or about the same time, which coincides with first the death of Ian Ogle and then the immediate aftermath.

[291] The overwhelming inference that can be drawn from all the telephony evidence is that Brown, Sewell, Rainey, Ervine and Spiers made up the group that murdered Ian Ogle. The constituent parts of the telephony evidence comprise a very strong cord on which the prosecution case relies.

Rainey's departure from Northern Ireland

[292] The evidence relating to this is that Agnew (Rainey's cousin) said he received two calls from Rainey on 28 January 2019, one mid-morning and the other in the afternoon. There is no record that either call came from the mobile telephone attributed to Rainey (614). Rainey did use 614 to telephone Aeroflot (the Russian national carrier) at 13:00 lasting 145 seconds. Rainey arranged with Agnew that Agnew give him a lift to Dublin airport. Agnew said that Rainey would ask this favour from time to time with lifts to Dublin airport and Belfast International airport and sometimes at short notice.

[293] When Agnew collected Rainey from the pre-arranged location on Mersey Street, Brown was also there, although Agnew was not expecting him. There was very little talk on the journey down. Brown and Rainey entered Dublin airport at 19:54 and then purchased tickets at the Aeroflot desk using cash. Their flights were to Thailand, via Moscow.

[294] Rainey's counsel suggested that the cash withdrawn by Rainey from Bank of Ireland on 23 January 2019 was indicative of an intention to fly to Thailand to visit his girlfriend in that country. He also suggested that this travel was a regular occurrence on the part of Rainey. As such, having pre-planned the trip before the murder and in particular the assault on Neil Ogle which precipitated the murder, this evidence, it was contended, proves his innocence, or at the least points away from his guilt.

[295] The chronology of events does support that contention, but the proposition is flawed for a number of reasons. There is no actual evidence that Rainey had planned ahead for this journey, neither is there any evidence given as to the reason for the travel at such short notice. The apparent foresight of withdrawing cash in advance of, and for the purpose of, foreign travel is rebutted by the evidence of the method by which he arranged his flight and the short notice of the booking. The

availability of the internet and travel agents within the Belfast area meant that the paying of cash at an airport desk for last minute flights on Aeroflot and via Moscow was highly unusual and clearly indicative of a last-minute effort to leave the jurisdiction. The evidence from Agnew would indicate that whilst Rainey was a regular traveller, he did not indicate where and for what purpose he was travelling. The issue is not whether Rainey did in fact have a girlfriend in Thailand and he was going to visit her, but rather why would he wish to fly to Thailand at such short notice and in the method that he used in the company of Brown who had murdered Ian Ogle the previous day. The fact that he returned without spare clothing into Manchester airport on 3 March 2019 would support his contention that he was visiting a location where he kept or stored clothing, but such a location could just as easily be regarded as a refuge in a time of trouble as opposed to a visit to a girlfriend.

[296] I reject the explanation suggested by Rainey for his departure. I am satisfied that the method and timing of his departure is a very strong piece of evidence that makes up the circumstantial case against him.

Ervine's departure from Northern Ireland

[297] Ervine's departure from Belfast was also at short notice. His half-sister, Jenkins received a phone call from Ervine's girlfriend requesting that she take Ervine to Larne to catch the ferry to Scotland. She described the request as unusual. The reason for the journey was stated to be that Ervine was planning to work in Scotland. Jenkins picked up Ervine off the street at a pre-arranged spot on Humber Court, off Dee Street, and he was accompanied by a male she did not know. That male was Edgar. This was about 10:30 on 28 January 2019 and they arrived at the ferry terminal at 11:27. Tickets were purchased for cash at the terminal.

[298] Ervine's counsel has suggested that such a journey could not be regarded as unusual or suspicious given the employment, cultural and sporting links between Northern Ireland and Scotland. I accept the existence of those links, but I reject them as a possible explanation for the journey. There is no evidence about why Ervine went to Scotland, or to corroborate his statement and the statement of his girlfriend that he was going to work there. Had the trip been planned, as he and his girlfriend suggested, there is no explanation for the short notice given to Jenkins.

[299] The urgent nature of the travel request and the perception of Jenkins that it was unusual, suggest that this was not a planned trip, but had been arranged in haste, within 12 hours of the murder of Ian Ogle.

[300] As with Rainey, I am satisfied that the method and timing of Ervine's departure is a very strong piece of evidence that makes up the circumstantial case against him.

The Ernesto knife

[301] The police recovered a knife and extendable baton from the Connswater River adjacent to the Mersey Street bridge on 14 February 2019, two and a half weeks after the murder. They were lying close to each other which was indicative of them being deposited into the river at the same time and at the same location.

[302] There is no forensic link between the knife and baton and any of the defendants (or any other individual including Ian Ogle). Given their presence in the water, albeit for an unknown period, one would not expect any forensic material to be adhering to them.

[303] The evidence from the night of 27 January 2019 was that Gannon, a chef by occupation, described one of the males carrying a knife in his back pocket with the blade (estimated at seven to nine inches) protruding from a back trouser pocket. The CCTV images of Male 5 appears to show such an implement protruding from his back trouser pocket and then later Male 5 holding a knife. A knife was used in the murder stabbing Ian Ogle 11 times. Neither Senbrook nor Gunning saw a knife being used. Senbrook saw what he called a bat, and Gunning saw a “long skinny metal rod type thing” and a baseball bat.

[304] Males 4 and 5 are captured by CCTV images after the murder. Male 4 was carrying what appears to be a gold or silver coloured baton which was extended and male 5 is carrying what appears to be a knife. The CCTV images before and after the murder do not show any other weapon being carried.

[305] Round the corner on Templemore Avenue, Gary Proctor observed a male carrying a knife about eight inches in length. Sharon Proctor, Aaron Noble and Alison Noble also saw this man carrying a knife.

[306] The knife recovered from the river was 33 cm in length with a 20 cm blade. This equates to approximately a full length of 13 inches and a blade of eight inches. The baton was extended with an orange handle and chrome coloured extension with a bend at one of the joints.

[307] The recovered knife was an Ernesto 290435 coded brand. I am satisfied that it is part of a seven piece set comprising five knives, a sharpening tool and a cutting board. This set was readily available from a Lidl store at Connswater and at other outlets in the Belfast area, as well as by mail or internet order.

[308] I have considered all the surrounding evidence in relation to the knife. The knife, given its length, could have been used in the murder of Ian Ogle, as could any knife with a blade of that type or length.

[309] The proximity of the baton and the knife together on the riverbed is strongly supportive of the fact that they were both used in the attack. The CCTV images indicate that two weapons similar in type and length were used by the attackers.

They were discarded at the same time and location, a location within the Newtownards Road area.

[310] I have also considered the results of searches of Spiers's home address. He had such an Ernesto knife set. However, he had six pieces from the set with the 33cm knife missing. I reject the suggestion made by Spiers that his house was treated as an 'open' house or 'party' house with people coming and going and taking things with them. This was suggested to the police when he was interviewed, but not given in evidence. I have set out below why I found that he lied about two important aspects of this case. I, therefore, regard his credibility as poor and little reliance can be placed on this explanation for the missing knife.

[311] I accept that it is highly likely that there are numerous houses in the East Belfast area with this Ernesto knife set. However, the issue in this case is not so much how many of those houses have such sets, but rather how many have the 33cm knife missing, are adjacent to the Connswater river and have occupants who spoke to Brown just prior to the murder when Brown was organising the assembly of a group to attack Ian Ogle. As each of these variables applies the number starts to diminish rapidly.

[312] In conclusion I consider that the fact the 33cm Ernesto knife was missing from Spiers's house, and such a knife was located in the Connswater river is very supportive of the proposition that Spiers carried and used that knife in the murder of Ian Ogle.

Spiers's lies to the police

[313] The prosecution also relies on the fact that Spiers lied to the police when he was being interviewed. The prosecution have referred to lies told about not owning a mobile phone. I also consider that he may have told other lies about his lack of knowledge about the assault on Neil Ogle.

[314] Before considering the evidence about this I remind myself about the law in relation to a defendant telling lies. First, I have to be satisfied beyond a reasonable doubt that he has told lies, in other words, deliberate untruths designed to mislead his questioners. If I find that he has told lies, then I must bear in mind that lies alone are not evidence of guilt. The lies may, however, indicate a consciousness of guilt and should the circumstances allow, they may be relied upon as evidence supportive of guilt. They may also impact on the general assessment of the credibility of other statements made by that defendant.

[315] I have given consideration as to whether Spiers did in fact lie. Dealing first with his ownership of a mobile phone. In a series of replies during the first interview (22:19 on 31 January 2019) he categorically stated that he did not have a mobile phone and did not use one. He repeated this during the second interview (11:22 the next day), admitting that he had a mobile phone "a long time ago." During the fourth interview (15:58 on 1 February 2019) he repeated this and stated

that no one had bought him one or gave him one. After he was released and re-questioned, in what was the seventh interview (11:38 on 29 May 2019) he told police that he still did not have a mobile phone.

[316] Although Spiers, through his counsel, has asked me to consider the evidence that there had been contact between the telephones which the police say are associated with Brown and Spiers prior to the assault on Neil Ogle, there has not been any formal confession by Spiers that he lied to the police about owning a mobile phone. I, therefore, must consider all the evidence about his ownership of a mobile phone.

[317] The phone the prosecution say is owned by Spiers is 502. This phone has never been located. The evidence adduced by the prosecution concerning the association of Spiers to that phone is compelling. The name 'Spiersy' is recorded against the number of the phone seized from Haire. Spiers admitted to police that occasionally he would be called that. There was significant usage by phone 502 to contact Spiers's partner, father and sister in January 2019, and a man paid cash on 7 January 2019 to top-up the phone, with the man wearing a distinctive fur-lined coat, with such a coat being seized by police on 19 June 2019 from Spiers's home and with a picture of Spiers (identified by his girlfriend) of him wearing such a coat on his 'Facebook' page. I am therefore satisfied beyond reasonable doubt that Spiers owned a mobile telephone in January 2019.

[318] During the seventh interview Spiers said that his "memory's not the best" and that he was addicted to alcohol and drugs. He has not adduced any evidence concerning this, but even if it was true this alone would not be an explanation that he had forgotten that he owned a mobile phone.

[319] Given the nature of the repeated denials and his failure to admit his ownership despite the numerous opportunities open to him to retract any earlier statements, I am satisfied beyond reasonable doubt that he deliberately told lies to the police.

[320] The second matter relates to his knowledge about the attack on Neil Ogle. During the seventh interview (11:38 on 29 May 2019) when asked about his knowledge about the assault on Neil Ogle, he said, "Never knew there was an assault made on Neil Ogle" and when asked "You didn't know?" he replied "No."

[321] I have already set out the telephony at the time of the assault on Neil Ogle. Relying on the 999-call made by an onlooker, this assault was ending about 20:45. Ryan Johnston and McAreavey said they saw Neil Ogle using his phone as he ran away and towards his girlfriend's house. The records show that Neil Ogle rang Brown at 20:45:42 and the call lasted 97 seconds. I am satisfied beyond reasonable doubt that the purpose of that call was to advise Brown that Neil Ogle had been assaulted and by whom. The actions taken by Brown at that time are dealt with earlier in my judgment, but of particular relevance, is a call made by Brown to Spiers at 20:52:04 which lasted 37 seconds.

[322] Given Brown's involvement in the murder of Ian Ogle that night and in particular his role in assembling the group and driving them to the murder scene, it is inconceivable that Brown did not tell Spiers about what had happened to Neil Ogle at 20:52:04 on 27 January 2019.

[323] In addition, given the general publicity about the death of Ian Ogle within the East Belfast community, the fact that the assault on Neil Ogle had been the precipitating event, and the potential involvement of associates of Spiers, it is also inconceivable that Spiers did not know anything about the assault on Neil Ogle.

[324] Again, whatever defects there were in relation to Spiers's memory, I reject any notion that he had somehow forgotten about the assault on Neil Ogle.

[325] I am, therefore, satisfied beyond reasonable doubt that Spiers also lied about his lack of knowledge about this assault.

[326] I consider that both of these lies have the potential to support evidence of Spiers's guilt as opposed to merely undermining his general credibility when one considers the answers he gave to the police. In the circumstances I remind myself of the warnings that are necessary when considering such lies (see *R v Lucas* [1981] QB 720). They are that I need to consider why Spiers lied, and to ignore the lies unless I am satisfied beyond a reasonable doubt that he did not lie, for example to cover up an involvement in this incident, but short of murder, or for another innocent reason such as out of shame or embarrassment given his association with others who were involved in the murder. The fact that Spiers has lied does not, in itself, prove that he is guilty.

[327] Of particular relevance is the case of *R v Taylor* [1998] Crim LR 822 when the Court of Appeal decided that the *Lucas* warnings were necessary in that case because the admitted lies of the defendant could only support the prosecution case if the jury were sure that they were told to conceal the fact that the defendant committed a murder, rather than to conceal his connection with the death.

[328] Spiers has not admitted he did lie, so I have no explanation from him as to why he lied. I have considered all the relevant surrounding evidence to ascertain if there is such an explanation that would explain why he lied about these two crucial matters - his knowledge about the precipitating incident that resulted in the murder of Ian Ogle and his ownership of a mobile phone.

[329] The telephony evidence only indicates contact between Spiers and Brown at the relevant time before and after the murder but ceasing very shortly after the murder. There was no contact with the other parties. On his case, he has no connection with the murder that would require him to lie. His association with Brown are the text messages and phone calls on 27 January 2019 with Brown departing Belfast the next day.

[330] I am therefore satisfied beyond a reasonable doubt that Spiers did not have a reason, or reasons, to lie to the police about not owning a mobile phone or knowing about the assault on Neil Ogle which were innocent in nature, such as out of shame or embarrassment about his connection to Brown, or others, or to conceal his involvement in this incident short of him committing the murder. As such I can take his lies into account as further support for the prosecution case against Spiers.

Spiers's asserted physical disability

[331] When interviewed by the police, Spiers asserted that he had certain physical disabilities (see para. [197]) which curtailed his ability to have been "running all those distances." This appears to raise an issue that he could not have committed the murder. No actual evidence has been given about the extent of these disabilities. I have watched the bus shelter CCTV images from Albertbridge Road and considered the evidence of the various witnesses before, at and after the murder. I am satisfied that even taking Spiers's description of his physical disabilities as accurate, there is nothing to support the contention that he could not have been one of the men in the group of five, and, in particular, Male 5.

The failure of Rainey, Ervine and Spiers to give evidence

[332] I will deal with each defendant separately. The dominant strands that make up the case against Rainey are his association with the faction which included Brown, Sewell, Neil Ogle and others and his previous conduct towards the Ian Ogle faction; the telephony evidence prior to and after the murder, and his departure from Northern Ireland with Brown the day after the murder. Of lesser importance is the DNA evidence, the clothing comparison and the cell site evidence.

[333] I do not consider that the weight that I can attach to the DNA, clothing comparison and cell site evidence is such that it requires an explanation from Rainey. However, I consider the other evidence to be particularly significant. Each of these strands does, in my view, call for an explanation from Rainey, and his failure to give one means that I can draw an inference against him. I propose to do so, and as such it further supports the case against him, both in enhancing the strength of the inferences that can be drawn from these individual strands, and by assisting the prosecution in rebutting any notion of coincidence in relation to these and the other weaker strands.

[334] The dominant strands that make up the case against Ervine are his association with the faction which included Brown, Sewell, Neil Ogle and others and his previous conduct towards the Ian Ogle faction, including specific threats to do harm to Ian Ogle; the telephony evidence prior to and after the murder, and his departure from Northern Ireland the day after the murder. Of lesser importance is the DNA evidence, the clothing comparison and the cell site evidence.

[335] I do not consider that the weight that I can attach to the DNA, clothing comparison and cell site evidence is such that it requires for an explanation from

Ervine. However, I consider the other evidence to be particularly significant. Each of these strands does, in my view, call for an explanation from Ervine, and his failure to give one means that I can draw an inference against him. I propose to do so, and as such it further supports the case against him, both in enhancing the strength of the inferences that can be drawn from these individual strands, and by assisting the prosecution in rebutting any notion of coincidence in relation to these and the other weaker strands.

[336] Rainey is in a slightly different position as he did answer some of the questions posed by the police, so the court has received some evidence about some explanations that he has given. However, he did not give evidence under oath, and he did not allow himself to be cross-examined about his involvement in the murder.

[337] The strands that make up the case against Spiers are the telephony evidence prior to and after the murder, the missing Ernesto knife from his knife set, and his lies to the police.

[338] I consider all of this evidence to be particularly significant. Each of the strands does, in my view, call for an explanation from Spiers. What he did say to the police lacked credibility and therefore his failure to give explanations means that I can draw an inference against him. I propose to do so, and as such it further supports the case against him by enhancing the strength of the inferences that can be drawn from these individual strands, and by assisting the prosecution in rebutting any notion of coincidence in relation to these strands.

Conclusion

[339] I have considered all the evidence in this case. This is a circumstantial case and involves different strands of evidence. Some strands of evidence I give no weight to and others I give very little weight to. I refer specifically to the identification evidence based on clothing comparisons and use of a bicycle, the cell-site analysis and the DNA evidence from the rear of the Seat Leon.

[340] However, the other strands of evidence are of much greater significance and weight. In the cases of Rainey and Erskine, I refer to the evidence of motive and the nature of their respective departures from Northern Ireland the day after the murder. In the case of Spiers, I refer to the Ernesto knife and the lies he told the police.

[341] In relation to all of the defendants I regard the telephony evidence to be highly significant and probative. It is a very weighty cord in the rope relied upon by the prosecution.

[342] I cannot identify any evidence that points away from any defendant.

[343] In all the circumstances I am satisfied beyond all reasonable doubt that Rainey, Erskine and Spiers were part of the group of five men, the others being

Brown and Sewell, that murdered Ian Ogle at Cluan Place at 21:19 on 27 January 2019, and I find each guilty of count 1 on the indictment.

Appendix 1

Admissibility of the convictions of Brown, Sewell, Morrison, Kirkwood, McCartney and Haire

[1] The prosecution sought to adduce the convictions of Brown, Sewell, Morrison, Kirkwood, McCartney and Haire. During the hearing I gave a brief *ex-tempore* ruling concerning the application and indicated that I would set out my full reasons in this written judgment.

[2] I approached the application in the following manner – Firstly, I considered if the convictions were relevant, next I considered whether they could be admitted under Article 72 of PACE, and finally I considered whether admission of the evidence would be unfair and should be excluded under Article 76 of PACE

[3] Lord Hughes when delivering the judgment of the Judicial Committee of the Privy Council in *Myers v R* [2015] UKPC 40 at para. [37] stated:

“The starting point is that evidence is not admissible unless it is relevant. It is relevant if, but only if, it contributes something to the resolution of one or more of the issues in the case. It may do so either directly or indirectly.”

[4] The principal issue in this case is the identity of the five men who attacked Ian Ogle which resulted in his death. Brown and Sewell have confessed to being two of the five men and their convictions is evidence of those confessions. The prosecution seek to rely on the interaction between Rainey, Ervine and Spiers and Brown and Sewell before and after the incident involving the death of Ian Ogle. In my view the convictions of Brown and Sewell of the murder of Ian Ogle are clearly relevant.

[5] The convictions of Morrison, Kirkwood, McCartney and Haire relate to criminal conduct after the incident involving the death of Ian Ogle. Morrison, McCartney and Haire have been convicted of assisting Brown. Morrison contacted Brown after police had called at her home looking for him, had moved the Seat Leon car and had passed the keys to McCartney. McCartney had hidden the keys, and Haire had driven Brown to Sewell’s home at Wye Street. Neither of these defendants had any relevant dealings with Rainey, Ervine and Spiers before and after the incident involving Ian Ogle’s death, and therefore their convictions do not contribute anything to the resolution of the determination of the identity of the three other attackers of Ian Ogle. The evidence is, therefore, not relevant and it should not be admitted.

[6] Kirkwood is in a slightly different category as his telephone had significant usage during the periods before and after the incident resulting in Ian Ogle’s death involving contact with the telephones attributed to Brown, Sewell, Rainey, Ervine

and Spiers. He also resided at a location close to where two of the men running from the scene may have called. The issue of relevance was therefore potentially engaged. The difficulty I had concerning this was, however, exactly what the conviction would prove?

[7] The offence of withholding information is defined in section 5(1) of the Criminal Law Act (NI) 1967 as "... where a person has committed a relevant offence, it shall be the duty of every other person, who knows or believes—(a) that the offence or some other relevant offence has been committed; and (b) that he has information which is likely to secure, or to be of material assistance in securing, the apprehension, prosecution or conviction of any person for that offence; to give that information, within a reasonable time, to a constable ..."

[8] The prosecution advised me that there was no agreed basis to Kirkwood's plea of guilty to the offence. It was unable, or unwilling, to advise me as to any particularisation of the elements of the crime including what was Kirkwood's knowledge or belief and what information it was alleged that Kirkwood had withheld from the police.

[9] In the absence of that information I considered that the prosecution had not satisfied me concerning the relevance of Kirkwood's conviction to the consideration of the identity of three of the five men involved in the attack on Ian Ogle. This does not exclude Kirkwood as a person of potential relevance concerning other evidence in the case. The evidence of the conviction was not relevant and cannot be admitted.

[10] Returning to the convictions of Brown and Sewell. Article 72(1) of PACE provides that "In any criminal proceedings the fact that a person other than the accused has been convicted of an offence by or before any court in the United Kingdom ... shall be admissible in evidence for the purpose of proving that that person committed that offence, where evidence of his having done so is admissible, whether or not any other evidence of his having committed that offence is given." Article 72(1) of PACE is therefore a gateway for the admissibility of the convictions of Brown and Sewell provided those convictions are relevant.

[11] The final issue is whether the convictions should be excluded under Article 76(1) of PACE. This provides:

"In any criminal proceedings the court may refuse to allow evidence on which the prosecution proposes to rely to be given if it appears to the court that, having regard to all the circumstances, including the circumstances in which the evidence was obtained, the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it."

Lord Hughes at para [38] in *Myers* when commenting on an identical provision in

the Bermudan legislation stated that the test is conventionally described as the consideration of whether the prejudicial effect of the evidence exceeds its probative value and that although it is often referred to as conferring a discretion on the judge, the rule imports more accurately an exercise in judgment, rather than one of indulgence.

[12] The consideration is the effect on the fairness of the proceedings, not whether it is unfair to a defendant.

[13] In *R v Kempster* (1990) 90 Cr App R 14 a review of the law was conducted and whilst it was acknowledged that Article 72 (and its English equivalent) should be used sparingly particularly where the guilt of an absent co-accused may carry enormous weight in the mind of the jury. However, when there was little or no issue that the offence had been committed and the real live issue is whether the defendant was party to it or not, evidence of the guilt of a co-defendant could properly be admitted to reinforce the evidence that the offence did occur (see para [16]).

[14] As to the fairness of the proceedings, *Kempster* at [18] indicated that:

“It remains a proper approach ... that if there is no real question but that the offence was committed by someone and the real issue is whether the present defendant is party to it or not, evidence of pleas of guilty is likely to be perfectly fair, though of course each case depends upon its own facts. However, it also remains true that such evidence may well be unfair if the issues are such that the evidence closes off the issues that the jury has to try.”

The reference to a closing off of a legitimate line of defence to an issue in the case echoes the comments of Lord Nicholls in *R v Loosely* [2001] UKHL 53 at [12] where he said:

“the phrase ‘fairness of the proceedings’ in [Article 76] is directed primarily at matters going to fairness in the actual conduct of the trial; for instance, the reliability of the evidence and the defendant’s ability to test its reliability.”

[15] The respective cases presented by each of the defendants by their defence statements and on the basis on what could be inferred from cross-examination of the prosecution witnesses is not that a murder was not committed or that they were present but lacked the necessary intent. The defence cases, plain and simple, are that they were not there.

[16] Hughes LJ in *R v S* [2007] EWCA Crim 2105 at [16] suggested that closing off a defence would arise “where the issue is such that the absent co-defendant who has

pleaded guilty could not, or scarcely could, be guilty of the offence unless the present defendant were also.” In the context of this case that test would be expressed in the following terms – Brown and Sewell could not, or scarcely could, be guilty unless one or more of Rainey, Ervine or Spiers were guilty.

[17] That is plainly not the case in light of the evidence that has been presented to this court, and as such no unfairness arises to the proceedings, or indeed to any of the defendants.

Appendix 2

Recusal as Trial Judge

[1] I have been asked to recuse myself by each of the defendants because of the content of the prosecution opening of this case on 13 February 2024. It was said by Mr McDowell KC during his opening that I would hear evidence concerning the comparison between clothing worn by the defendants as captured on CCTV images on occasions prior to the murder and clothing worn by men captured on other CCTV images adjacent to the murder scene and at the time of the murder. In particular, he said that the comparison had been carried out by an expert who would say that there is strong support for the contention that it was the same type of clothing.

[2] The prosecution no longer relies on this evidence, and it was not adduced. The expert witness did, however, give some evidence and that included details of his experience in dealing with CCTV imagery and clothing comparison. His evidence did not extend beyond that and did not include how he conducted the analysis in this case and how he was able to come to his conclusions. The defendants say that although no actual evidence was given the fact that the court heard the evidence relating to the expert's experience compounded the problem created by the prosecution opening.

[3] Further argument was developed in relation to bias created by the prosecution opening.

[4] The law in relation to this type of application is well established. Earle CJ in *R v Winsor* (1866) LR 1 QB 390 said that a jury should not be discharged unless a high degree of need for it arose. The same applies to the discharge of a judge, as the tribunal of fact, in a 'Diplock' trial.

[5] Girvan J in *R v Craig & Speers* [2003] NICC 19 was dealing with a slightly different issue which related to whether a voir dire was necessary and the sequencing of when an application to exclude evidence should be made. He did, however, make some general and relevant comments about non-jury trials on indictment.

[6] At [7] he said:

“The context of Diplock non-jury trials is of course different from jury trials ... Magistrates and Diplock judges are both judges of fact and law.”

and at [9]:

“a Diplock case is significantly different from a jury trial where there is an unreasoned jury verdict and in a jury

trial the court will be astute to ensure that the jury hears no evidence that is more prejudicial than probative.”

and then:

“fairness is still achieved because at the conclusion of the trial the court must give its fully analysed decision if the defendant is convicted and the defendant has an untrammelled right of appeal. In this respect a Diplock case is significantly different from a jury trial where there is an unreasoned jury verdict and in a jury trial the court will be astute to ensure that the jury hears no evidence that is more prejudicial than probative.”

[7] The vast majority of criminal cases are dealt with in the Magistrates’ Court by District Judges acting as judges of fact and law. Situations such as the one that has arisen in this case do arise from time to time with the tribunal of fact being exposed to inadmissible evidence, irrelevant evidence, relevant evidence which should be excluded because its probative value is outweighed by its prejudicial effect, evidence referred to but not adduced, or other words uttered and events occurring both in and outside the court.

[8] When a jury is the tribunal of fact, the judge as the tribunal of law will decide to deal with these developments. The judge has the discretion to allow the trial to continue with, or without, appropriate warnings, or to discharge the jury if it is felt that the exposure of the tribunal of fact to the material creates a situation that cannot be cured by warnings.

[9] District Judges, as both judges of fact and law, make those decisions on a regular basis when deciding whether to stop a criminal trial in the event of their exposure to prejudicial material.

[10] Hart J in *R v Meenan* [2010] NICC 37 refused to recuse himself when exposed to potentially prejudicial material before the trial. He referred to the judgment of Lowry LCJ in *R v Fletcher* [1983] 1 NIJB 1 where it was stated a judge:

“is both trained and accustomed to think dispassionately and to separate the essential from the incidental and the probative from the merely prejudicial.”

and adding later that:

“the best antidote to subconscious influence is awareness of the danger and a conscious decision by a trained mind not to succumb to influence.”

[11] As for the test to be applied by the judge in making such an assessment,

Blackstone's Criminal Practice (2024 edition) at D13.62 under the heading of 'Accidental prejudice' states that it involves consideration of the nature of the prejudicial material, the circumstances in which it was revealed, the strength of the respective cases and the extent to which the harm is otherwise remediable. This is echoed in a later section at D16.13 where it says:

"Whether reference in [the prosecution] opening to evidence which turns out to be inadmissible or for any other reason is not called, represents a ground for quashing an accused's conviction depends on the extent to which the accused is prejudiced by it."

[12] It has recently been reiterated by the Court of Appeal in *R v BD* [2024] NICA 46 when it approved the established approach set out in *R v Ghadghidi* [2016] NICA 43 which followed the Privy Council's decision in *Aurthurton v The Queen* [2004] UKPC 25. When a jury (or tribunal of fact) has been exposed to prejudicial material the discretion to discharge is based on the context, the issues in trial and the significance of the material to those issues.

[13] In my approach to exercising my discretion I bear in mind that I did not hear any evidence concerning how the expert approached his analysis and how he came to his conclusion. I also bear in mind that, as juries are often told, I am not obliged to accept the opinion of any expert.

[14] The prosecution opening is not evidence. Juries will be told this several times during the trial, particularly at the beginning and at the end. Counsel in a trial do not give evidence.

[15] The context of this, and indeed all of the, evidence relates to the prosecution's circumstantial case against each defendant. As with all circumstantial evidence cases the pieces of relevant admissible evidence are treated as threads or cords wound together and at the conclusion of the case, taking all the evidence into account, a tribunal of fact will determine if the resulting rope created by the threads and cords is substantial enough to bear the burden placed on the prosecution to prove the guilt of each defendant beyond reasonable doubt (see *Exall* (1866) 4 F & F 922).

[16] Although the defendants Rainey and Irvine have attempted to promote this clothing comparison evidence as of crucial importance - for Rainey it is said to be the "cornerstone" of the prosecution case and for Irvine a "central tenet" - I struggle to reach that conclusion. Standing back and looking at this type of evidence generally, I do not think it could be a serious contention to say that the fact that a defendant was wearing clothing similar to the clothing worn by a man who at a later time committed a crime is particularly probative of the fact that that the defendant committed the crime. This is true whatever the degree of similarity. It may have some relevance depending on the type and rarity of the clothing or the lapse of time between the two recordings, but it is of limited relevance, and it diminishes the

greater the time between the two incidents captured by the CCTV.

[17] Mr McDowell KC in argument briefly set out the various threads and cords which he says make up the rope on which the prosecution holds its case against each defendant. It is not necessary for me to set those out here but in due course each will be analysed as to its probative value and the weight that can be attached to it. It is safe to say that the evidence with regard to clothing comparison makes up a very modest aspect of the prosecution case and as such whatever Mr McDowell KC said in the opening has modest significance in the context of the issues in the trial.

[18] If the quality of the recorded material is adequate, it is still open to me, as the tribunal of fact, to make comparisons. If I choose to do so I can, and will, do that without the influence of Mr McDowell's comments. If I do so, my analysis will be set out in my written judgment as will the weight that I attach to any conclusions. The fairness to all parties, including the defendants, is protected by that process as is the ability on the part of a defendant to appeal an adverse decision without the need to seek the leave of the court. In jury trials there are no recorded reasons for any verdict other than the assumption that the jury have followed the judge's directions to apply the evidence given in the trial to the law as explained to them by the judge. This is not replicated in a Diplock trial and a judge's consideration of the discretion to discharge must be seen in that context.

[19] The defendants sought to raise the issue of bias, but this is not a separate issue. The perceived danger is that the tribunal of fact will somehow be biased against a defendant due to exposure to prejudicial material which is not admissible evidence in the trial. In this case, it is a suggestion that there may be apparent bias. The test for apparent bias requires consideration of a possibility applying information known to and attributes of a hypothetical observer. McCloskey J in *R v Jones* [2010] NICC 39 stated that the "the hypothetical observer is properly informed of all material facts, is of balanced and fair mind, is not unduly sensitive and is of a sensible and realistic disposition."

[20] He then added that:

"Such an observer would, in my view readily discriminate between once in a lifetime jury and a professional judge. The former lacks the training and experience of the latter and conventionally acknowledged to be more susceptible to extraneous matters. Moreover, absent actual bias (a rare phenomenon), the proposition that a judge will, presumptively decide every case dispassionately and solely in accordance with the evidence seems to me unexceptional and harmonious with policy of the common law."

[21] I, like McCloskey J in *Jones*, pose the question: what would the hypothetical observer, possessed of the specified information and endowed with the attributes

discussed above, make of this case?

[22] In my view, such an observer would consider, whatever the concerns arising from the content of the prosecution opening speech, that those concerns can be, and will be, dealt with by the ongoing trial process and a full reasoned judgment at the conclusion of the trial. As such, in no way does my refusal to recuse myself impact on the fairness of the trial or the right of each defendant to a fair trial.

[23] For these reasons, I refuse the application that I recuse myself as the judge in this case.

Appendix 3

'No case to answer'

Introduction

[1] The prosecution case having closed, each defendant has applied for a direction that that defendant has no case to answer.

Legal principles

[2] The law in respect of such applications is well developed and is not controversial.

[3] The judgment of Lord Lane CJ in *R v Galbraith* (1981) 73 Cr App R 124 sets out the extent of the jurisdiction vested in a judge when sitting with a jury:

“How then should the judge approach a submission of ‘no case’?”

(1) If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty. The judge will of course stop the case.

(2) The difficulty arises where there is some evidence, but it is of a tenuous character, for example because of inherent weakness or vagueness or because it is inconsistent with other evidence.

(a) Where the judge comes to the conclusion that the Crown's evidence, taken at its highest, is such that a jury properly directed could not properly convict on it, it is his duty, on a submission being made, to stop the case.

(b) Where however the Crown's evidence is such that its strength or weakness depends on the view to be taken of a witness's reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence on which a jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury.”

[4] *Galbraith* refers to the need to take the Crown evidence at its height. Turner J attempted to qualify this in some way when he stated that it did not mean “taking

out the plums and leaving the duff behind" (*R v Shippey* [1988] Crim LR 767) but it has been held that this judgment should not be elevated into a legal principle, but rather a fact-specific illustration of the requirement that the judge, at this stage of the case, should consider the evidence as a whole, including both its weaknesses and strengths. (see *R v Chistou* [2012] EWCA Crim 450).

[5] There are certain aspects of the cases against each defendant which relate to identification of the five men walking towards the scene of the murder and then walking back, as captured on various CCTV images. When coupled with the CCTV images from Cluan Place of the actual murder and the evidence of the two witnesses at the scene of the murder, there is compelling evidence that these five individuals did commit the physical acts that resulted in the death of Ian Ogle. However, I do not consider this to be a classic 'identification' case as the Crown case does not rely in whole, or in part, on the evidence of any witness who has stated that they recognise a defendant from the CCTV footage. Bearing this in mind, I will, however, mention how the principles in *Galbraith* should apply in respect of identification cases generally, as set out by Lord Widgery CJ in *R v Turnbull* (1976) 63 Cr App R 132 at 138:

"When, in the judgement of the trial judge, the quality of the identifying evidence is poor, as for example when it depends solely on a fleeting glance or on a longer observation made in difficult conditions, the situation is very different. The judge should then withdraw the case from the jury and direct an acquittal unless there is other evidence which goes to support the correctness of the identification."

[6] The cases against each defendant are ones based on circumstantial evidence. As such the Crown case relies on different strands of evidence, some more probative than others. It is important that reference is made to the well-known judgment of Pollock CB in *R v Exall* (1866) 4 F&F 922 at 928 (approved in this jurisdiction by the Court of Appeal in *R v Meehan (No 2)* [1991] 6 NIJB 1:

"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."

[7] When dealing with an application that there is no case for a defendant to answer, and that case is reliant on circumstantial evidence, the judgment of Aikens LJ in *R v Goddard* [2012] EWCA Crim 1756 at [36], applies the principles in *Galbraith* and sets out the test to be applied:

“We think that the legal position can be summarised as follows:

(1) in all cases where a judge is asked to consider a submission of no case to answer, the judge should apply the “classic” or “traditional” test set out by Lord Lane CJ in *Galbraith*.

(2) Where a key issue in the submission of no case is whether there is sufficient evidence on which a reasonable jury could be entitled to draw an adverse inference against the defendant from a combination of factual circumstances based upon evidence adduced by the prosecution, the exercise of deciding that there is a case to answer does involve the rejection of all realistic possibilities consistent with innocence.

(3) However, most importantly, the question is whether a reasonable jury, not all reasonable juries, could, on one possible view of the evidence, be entitled to reach that adverse inference.

If a judge concludes that a reasonable jury could be entitled to do so (properly directed) on the evidence, putting the prosecution case at its highest, then the case must continue; if not it must be withdrawn from the jury.”

[8] It is however important that in a circumstantial case all the evidence has to be considered. This is the clear theme emerging from the judgments I have referred to above in *Christou* and *Turnbull*, and which was reinforced by Kerr LCJ in *R v Courtney* [2007] NICA 6 at [31] in the following terms:

“We can quite understand how the judge came to focus on the evidence of the McCulloughs and Mr Hagan since the claim that they made was the centrepiece of the Crown case. But we consider that he was wrong to isolate this evidence from the remainder of the Crown case. In a case depending on circumstantial evidence, it is essential that the evidence be dealt with as a whole because it is the overall strength or weakness of the complete case rather

than the frailties or potency of individual elements by which it must be judged. A globalised approach is required not only to test the overall strength of the case but also to obtain an appropriate insight into the interdependence of the various elements of the prosecution case.”

[9] It is also important to consider how a judge approaches this decision when sitting both as a judge of the law and a judge of the facts, whether as a District Judge in the magistrates’ court or a Crown Court Judge conducting a ‘Diplock’ trial without a jury.

[10] Recently, Keegan LCJ in *R v McKerr* [2024] NICA 8 at [21] re-affirmed the test set out by Kerr LCJ in *Courtney* and in the earlier judgment in *Chief Constable v Lo* [2006] NICA 3 framing the question to be asked in the following terms:

“Whether the judge is convinced that there are no circumstances in which he could properly convict.”

[11] Before leaving the application of the law in relation to the defence applications, it is important to note the observation of Lord Lowry CJ in *R v Hassan* [1981] Lexis Citation 1732 when sitting at first instance in a judge only Crown Court trial. He agreed with, and adopted, the section in *Archbold* (40th ed) and a comment in the 7th supplement (reported at [1962] 1 All ER 448):

“In their summary jurisdiction magistrates are judges both of facts and law. It is therefore submitted that even where at the close of the prosecution case, or later, there is some evidence which, if accepted, would entitle a reasonable tribunal to convict, they nevertheless have the same right as a jury to acquit if they do not accept the evidence, whether because it is conflicting, or has been contradicted, or for any other reason.”

[12] Whether this creates a sub-category of the approach in *Galbraith* with a self-direction to acquit a defendant, or is simply the delivery of a verdict that the defendant is not guilty is a matter of debate and may impact on the right of the prosecution to appeal, however, using this as an example, Kerr LCJ in *Lo* (at [13]) observed that:

“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.”

[13] The bar envisaged by Kerr LCJ in *Lo* is therefore a high one.

The Crown and Defence cases

[14] I turn now to consider the applications of each defendant and would thank counsel for their written and oral submissions. In doing so, despite the common themes which arise in the consideration of some of the evidence, I am looking at the case for and against each defendant separately. Following the order in the indictment, I will start with Rainey.

[15] The Crown’s case against Rainey relies on the following:

- (a) Rainey (with Ervine and Brown) was centrally involved in the Prince Albert Bar incident on 1/2 July 2017. Rainey continued to display threatening language towards Ryan Johnston in Belfast city centre and on social media. The attack on Neil Ogle by Ryan Johnston and Ian Ogle created a motive for Rainey to seek revenge, particularly after Vera Johnston shouted to Neil Ogle to go and get his f***** cronies and Ian Ogle told him to “get Saucey [ie Rainey] and Sewell.”
- (b) The telephone contact between Rainey and others in the immediate aftermath of the assault on Neil Ogle by Ryan Johnston and Ian Ogle. The Crown rely on the inference to be drawn from the various telephone calls that Neil Ogle alerted Brown at 20:45 that he had been assaulted by Ryan Johnston and Ian Ogle in a call lasting one minute 37 seconds and then Brown started to contact others. Over a period of approximately 20 minutes the group of five attackers was assembled. Brown called Rainey at 20:55 for 19 seconds, at 21:04 for seven seconds and at 21:08 for 14 seconds. In addition, Reece Kirkwood was in regular contact with Ervine between 20:51 and 21:02. Kirkwood then called Rainey at 21:03 for 65 seconds and then immediately called Ervine at 21:04 for 29 seconds
- (c) The Crown’s case is that the group are likely to have gathered at Sewell’s address at 14 Wye Street, to await Brown’s arrival in his girlfriend’s Seat vehicle. The vehicle then travelled to arrive outside the Prince Albert Bar at 21:14 with Brown and Sewell exiting the vehicle and issuing threats against the Ogle family. Two other unidentified people exited the vehicle at this time. The vehicle then drove off and travelled towards the Templemore Avenue area. After the murder, some of the five attackers are seen entering this vehicle and it is driven off to be parked off Pitt Place where it was located by police.
- (d) A predominant DNA profile matching Rainey was found on the inner near side rear door handle. The Seat vehicle had come into the ownership of

Brown's girlfriend 10 weeks prior to the murder and Brown had his own vehicle.

- (e) The Crown case is that Rainey is in the group on its way to Cluan Place (described as Male 3). Male 3 is wearing a jacket which has a small circular type badge or motif on the upper right chest which has similarities to a jacket worn by Rainey on 23 January 2019 in the Bank of Ireland branch in Donegall Square South. There are also similarities in height and build. The jacket has never been recovered.
- (f) Cell site analysis, based on the company data and Paul Hope's analysis of the area 13 months later, indicates that the mobile telephone attributed to Rainey (the number ending 614) was using masts in the area of the relevant locations that evening. These include Wye Street, the projected route taken by the Seat vehicle, Templemore Avenue and the murder scene.
- (g) At 22:02 Brown is seen walking close to the police vehicle on Pitt Place, where it is parked facing the street in which the Seat vehicle is parked. At 22:05 Brown telephoned Rainey for 42 seconds, followed by further calls at 22:17 for eight seconds and at 22:19 for 11 seconds. At 22:21 Rainey's telephone detached from the network. It was briefly reconnected the following day for 18 seconds at 01:42 and later to telephone Aeroflot and to access voicemails. The telephone or SIM card has not been recovered.
- (h) Rainey left Belfast at or about 18:30 on 28 January 2019 and was driven to Dublin airport by his cousin Jason Agnew. He was in the company of Brown. He telephoned Aeroflot at 13:00 for two minutes 25 seconds. Tickets for flights to Thailand via Moscow were purchased using cash at Dublin airport at or about 19:54 and Rainey and Brown boarded the flight. Rainey returned to the United Kingdom when he flew into Manchester airport on 3 March 2019 with no baggage or clothing. No onward flight had been booked.

[16] The Crown's case against Ervine relies on the following:

- (a) Ervine (with Rainey and Brown) was centrally involved in the Prince Albert Bar incident on 1/2 July 2017. Ervine also issued threats to the Ogle family in the September 2017 incident on the Newtownards Road. The attack on Neil Ogle by Ryan Johnston and Ian Ogle created a motive for Ervine to seek revenge, particularly after Vera Johnston shouted to Neil Ogle to go and get his f***** cronies.
- (b) The telephone contact between Ervine and others in the immediate aftermath of the assault on Neil Ogle by Ryan Johnston and Ian Ogle. The Crown rely on the inference to be drawn from the various telephone calls that Neil Ogle alerted Brown at 20:45 that he had been assaulted by Ryan Johnston and Ian Ogle in a call lasting one minute 37 seconds and then Brown started to contact others. Over a period of approximately 20 minutes the group of five

attackers was assembled. Kirkwood attempted to call Ervine at 20:51 and Ervine returned his call at 20:52 for two minutes 58 seconds. Kirkwood and Ervine at 21:00 for 53 seconds, and Ervine sent a text message to Kirkwood at 21:02, after which Kirkwood rang Rainey (see above), before calling Ervine at 21:04 for 29 seconds. Ervine then rang Neil Ogle at 21:05 but is unlikely to have spoken as the call lasted two seconds and then rang Brown at 21:08 for seven seconds before Brown rang Rainey at 21:08 (see above). Ervine made two calls to Kirkwood at 21:08 and 21:09 but each was very brief, and Kirkwood returned the calls at 21:09 for 14 seconds and sent a text message at 21:12

- (c) At or about 20:12 a man the prosecution say is likely to be Ervine is seen to be cycling along Wye Street and entering Sewell's home. The man uses a dismounting method similar to the method used by Ervine when dismounting at the Russells Shop4U premises on the Newtownards Road on 25 January 2020. The Crown's case is that the group are likely to have gathered at Sewell's address at 14 Wye Street, to await Brown's arrival in his girlfriend's Seat vehicle. The vehicle then travelled to arrive outside the Prince Albert Bar at 21:14 with Brown and Sewell exiting the vehicle and issuing threats against the Ogle family. Two other unidentified people exited the vehicle at this time. The vehicle then drove off and travelled towards the Templemore Avenue area. After the murder, some of the five attackers are seen entering this vehicle and it is driven off to be parked off Pitt Place where it was located by police.
- (d) A mixed DNA profile indicating that Ervine could have been a low-level contributor was found on the near side rear seat belt release. The Seat vehicle had come into the ownership of Brown's girlfriend 10 weeks prior to the murder and Brown had his own vehicle.
- (e) The Crown case is that Ervine is leading the group on its way to Cluan Place (described as Male 4). Male 4 is wearing a zip-up jacket with the hood up. He is wearing tracksuit bottoms with three-quarter length vertical stripes to mid-thigh (similar to Adidas branded goods) and grey trainers with a white mid-sole. He is carrying an extendable baton. Ervine is seen on CCTV earlier that day at 12:12 to 12:16 at the Russells Shop4U premises wearing tracksuit bottoms and trainers which have similarities to those worn by Male 4. The two males have a generally consistent height and build. The tracksuit bottoms and trainers have not been recovered.
- (f) An extendable baton similar to the one carried by Male 4 and a knife were found adjacent to each other on the bed of the Connswater River 25 metres to the south of the Mersey Street bridge on 14 February 2019.
- (g) Cell site analysis, based on the company data and Paul Hope's analysis of the area 13 months later, indicates that the mobile telephone attributed to Ervine (the number ending 290) was using masts in the area of the relevant locations

that evening. These include Wye Street, the projected route taken by the Seat vehicle, Templemore Avenue and the murder scene.

- (h) At 21:24 Ervine called Kirkwood for 6 seconds. At this time two of the escaping group of five were in the vicinity of Kirkwood's residence. Ervine then called his partner at 21:32 for six seconds and then called Kirkwood at 21:47 for 21 seconds, with Kirkwood returning the call at 21:57 for 14 seconds. At 22:02 Brown is seen walking close to the police vehicle on Pitt Place, where it is parked facing the street in which the Seat vehicle is parked. At 22:06 Brown telephoned Ervine for 25 seconds. Ervine then called his partner at 22:08 getting her voicemail followed by another call at 22:08 for 30 seconds. He then sent his partner a text at 22:10 which was the last call or message recorded for the telephone. The handset or SIM card have not been recovered. Brown tried to call Ervine at 22:34 as did Kirkwood at 22:46.
- (i) Ervine left Belfast at or about 10:30 on 28 January 2019 and was driven to Larne P&O ferry terminal by his half-sister. He travelled in the company of Greg Edgar. (Edgar had been involved in the July 2017 Prince Albert Bar incident and Ervine had tried to telephone him prior to the murder of Ian Ogle.) Both men purchased tickets for the Cairnryan ferry with cash and boarded the ferry. He returned to Belfast port (using the Stenaline ferry) on 3 February 2019.

[17] The Crown's case against Spiers relies on the following:

- (a) The telephone contact between Spiers and others in the immediate aftermath of the assault on Neil Ogle by Ryan Johnston and Ian Ogle. The Crown rely on the inference to be drawn from the various telephone calls that Neil Ogle alerted Brown at 20:45 that he had been assaulted by Ryan Johnston and Ian Ogle in a call lasting one minute 37 seconds and then Brown started to contact others. Over a period of approximately 20 minutes the group of five attackers was assembled. Brown called Spiers at 20:52 for 37 seconds and again at 21:04 for 14 seconds.
- (b) At or about 20:08 a man is seen to be running up Frome Street towards Wye Street a direction consistent to the direction that would have been taken by Spiers to get from his home to Sewell's home on Wye Street. The man appears to be wearing trousers darker in tone than his top clothing. The top appears to have a dark stripe down the arm and a light coloured object covering the lower part to his face. The Crown's case is that the group are likely to have gathered at Sewell's address at 14 Wye Street, to await Brown's arrival in his girlfriend's Seat vehicle. The vehicle then travelled to arrive outside the Prince Albert Bar at 21:14 with Brown and Sewell exiting the vehicle and issuing threats against the Ogle family. Two other unidentified people exited the vehicle at this time. The vehicle then drove off and travelled towards the Templemore Avenue area. After the murder, some of the five

attackers are seen entering this vehicle and it is driven off to be parked off Pitt Place where it was located by police.

- (c) The Crown case is that Spiers is the third man in the group on its way to Cluan Place (described as Male 5). Male 5 is wearing a zip-up jacket with a dark stripe down the arm. He is wearing jeans which are darker in tone to the jacket and a light-toned scarf over his lower face. A long knife or similar object is sticking out of his rear pocket as he walks toward the scene of the murder, and he is carrying the knife in his left hand when he is leaving the scene.
- (d) An extendable baton and large kitchen knife were found adjacent to each other on the bed of the Connswater River 25 metres to the south of the Mersey Street/Parkgate Avenue bridge on 14 February 2019. The knife was branded 'Ernesto' and was 33cm in length with a blade 20cm long and 4.2cm wide. Pathology evidence indicates that it could have caused the fatal injuries to Ian Ogle. A knife set branded 'Ernesto' comprising five knives, a sharpening tool and cutting board, but missing the 33cm knife, was located in Spiers's home at 20 Mersey Street, 350 metres from the Mersey Street/Parkgate Avenue bridge.
- (e) Cell site analysis, based on the company data and Paul Hope's analysis of the area 13 months later, indicates that the mobile telephone attributed to Spiers (the number ending 502) was using masts in the area of the relevant locations that evening. These include Wye Street, the projected route taken by the Seat vehicle, Templemore Avenue and the murder scene.
- (f) At 21:52 Spiers sent a text message to Brown, and Brown replied by text at 21:54 with Spiers again texting Brown at 22:00 and at 22:02. Spiers' telephone detached from the network at 22:40 and the handset and SIM have not been recovered.
- (g) During his interviews Spiers repeatedly told police that he did not own a mobile telephone on 27 January 2019.
- (h) During his seventh interview with police Spiers was asked by police when he was made aware of the assault on Neil Ogle and he replied that he never knew there was an assault made on Neil Ogle.

[18] The question I pose to myself in respect of each defendant is whether I am convinced that there are no circumstances in which I could properly convict that defendant. In doing so I remind myself of the Crown's obligation to prove the guilt of each defendant so that I am sure of their guilt. I also bear in mind that when I am considering the combined weight of the individual strands of evidence that make up the circumstantial cases against each defendant that I take into account the normal warnings that apply when considering circumstantial evidence cases. First of all, I will ask myself if any of this evidence could have been fabricated and secondly, I ask

if there exists one or more strands of evidence that are not merely neutral in character but are inconsistent with any other conclusion than that a particular defendant is guilty. Such an inconsistent strand would be more important than all the other strands because it would destroy the conclusion of guilt on the part of that defendant.

[19] I have taken into account the submissions made on behalf of each defendant. Some of them deal with a common theme. This relates to what proper inferences could be drawn from the cell site analysis relating to the presence of the handsets belonging to each of the defendants. Given the number of masts, the built environment in this area of East Belfast, the number of residential properties with a high density of population living within the area, and the wide-ranging locations from which handsets could be picked up from an azimuth of a mast, the resulting analysis of Paul Hope could not possibly attempt to provide for any particular location of a handset at a particular time. All the analysis shows is that the handset could have been located in a large number of locations in the area. Although the locations may be consistent with the Crown's case as to the movements of the various co-accused, it is equally consistent that they were elsewhere at the time, including at their homes.

[20] On behalf of Rainey it was submitted as follows:

- (a) In respect of any motive, whatever happened in the Prince Albert Bar in July 2017 was 18 months before the murder. There was no evidence of any ongoing issues between Rainey and Ian Ogle after that and whatever passed between Rainey and Ryan Johnston during the Belfast city centre meeting and on social media was of limited consequence. This could not provide a motive for Rainey to murder Ian Ogle.
- (b) In respect of telephone contact, Rainey and Brown are friends. There is no evidence to suggest that the contact before and after the murder was new or unusual. Rainey did not instigate any contact, and the content of the calls is unknown.
- (c) Rainey's DNA in the Seat vehicle would not be unusual as he was a friend of Brown.
- (d) Any attempt to identify Rainey by clothing comparison is not based on evidence and is merely speculation. Even at its height, no comparison could be made.
- (e) Rainey's case is that he is a frequent traveller to Thailand, and the withdrawal of £3000 from the Bank of Ireland on 23 January 2019 is indicative that this was for a planned trip, unrelated to the murder four days later.
- (f) His association with Brown before and after the murder is not indicative of guilt as they were long-term friends.

- (g) In addition to addressing the strands of the Crown case, Rainey also referred to evidence which he says is inconsistent with his guilt. Firstly, Rainey was known to Gunning, one of the witnesses of the murder, and was not identified. Secondly, the absence of any forensic evidence to connect Rainey to the murder scene or the deceased and thirdly there is no evidence which even suggests Rainey met up with others at Wye Street (or other location) to be transported by Brown to the murder scene.

[21] On behalf of Ervine it was submitted as follows:

- (a) In relation to the incidents in July and September 2017 whilst it is acknowledged that Ervine's conduct and language displayed ill-feeling towards Ian Ogle and his family, there is no evidence of any specific and recent ill-feeling, towards Ian Ogle.
- (b) No evidence has been given concerning the content of the telephone calls and messages before and after the murder and it is therefore pure speculation to suggest a content. Ervine is an associate of the other persons with whom he had been in contact.
- (c) Ervine's use of a bicycle and his method of dismounting is not particularly unique and could not be used to suggest that he is the person travelling to Sewell's address at 14 Wye Street. There is no evidence to suggest Ervine was ever present in his property before or after the murder.
- (d) Any DNA evidence, at its height only suggests Ervine was in the back of the Seat vehicle at an unknown date and time.
- (e) Any attempt to identify Male 4 as Ervine based on clothing comparison from the Russells Shop4U footage is flawed given the unremarkable nature and popular use of the clothing worn. Absent any other type of identification this aspect of the Crown case is inherently weak.
- (f) The travel to Scotland is not an out of the ordinary event given the extensive employment, cultural and sporting connections between Northern Ireland and Scotland.
- (g) In addition to addressing these specific strands of the Crown case, Ervine also referred to the guilty pleas of the co-accused Brown and Sewell. Although it is acknowledged that both are associates of Ervine, there is no evidence to physical link Ervine to either suggesting that he was in their company.

[22] On behalf of Spiers it was submitted as follows -

- (a) In relation to the telephone calls, Brown and Spiers had been in communication with each other prior to the assault on Neil Ogle. The use of

telephone and text messages before and after the murder of Ian Ogle between the two men is not unusual. After the assault on Neil Ogle, Brown telephoned others before calling Spiers.

- (b) There is no evidence to support any identification of the male running along Frome Street who the Crown say is Spiers. No expert evidence has been adduced concerning the stripe on the arm of that person. In addition, there is no evidence that this person actually ran to, or entered 14 Wye Street, the address at which the Crown say the group assembled.
- (c) In relation to the knife recovered from the Connswater River its length is the only basis for the pathologist to opine that it could have caused the wounds sustained by Ian Ogle. Any knife of that length could have caused the wounds. There is no forensic link between the knife and the murder. There is no evidence to confirm the exact number of Ernesto knife sets sold in the Belfast area. The local Lidl store had sold 48 sets in February and March 2018, but the sets were also for sale at other Lidl stores and available on mail order.
- (d) If Spiers lied to police, he offered a reasonable explanation to police that given the public abhorrence surrounding the murder he did not wish to have it known that he had been in telephone contact with others.
- (e) In addition to addressing the specific points raised by the Crown, Spiers also referred to evidence which he says points towards his innocence. There is no evidence to suggest that he was involved in any of the incidents in July and September 2017, or any other incident which would indicate any *animus* towards Ian Ogle. There is no identification, or attempted identification, of Spiers either at Wye Street where the Crown say the group assembled, in the Seat vehicle, at the murder scene, or thereafter. There is no forensic link of Spiers to the Seat vehicle or to the murder scene. After the murder, Spiers did not leave Belfast and when arrested co-operated with police in respect of some of their questions.

Consideration

[23] I have considered the cases both against and for each of the defendants. One of the common themes pressed upon me by each of the defendants is that whatever their association with each other and in particular with Brown and Sewell, it is not evidence of their guilt. What inferences can be drawn, if any, from this association? Mere association with a guilty person or a person accused of a crime, in the absence of other evidence, could never give rise to an adverse inference of guilt of any accused. However, the circumstances of the association can be relevant. Hutton LCJ in *R v McManus* (1993) NIJB 11 page 36 set out the correct approach in dealing with this matter at 42/43:

“there are many cases where a group of persons are together in such circumstances that, by reason of the

surrounding facts, it is entirely open to the court to draw an adverse inference against one of the group by reason of his presence with the others in the situation and in the circumstances which are proved to exist.”

[24] Applying the legal principles that I have set out earlier in this ruling to the evidence adduced at the trial, and taking into account the submissions made on behalf of each defendant and by the Crown in response, I am not satisfied that there is no possibility that I will be satisfied beyond a reasonable doubt that each of the defendant is guilty. In my judgment, this is not one of those exceptional cases as described by Kerr LCJ in *Lo*.

[25] I acknowledge that some of the points made on behalf of each defendant expose certain flaws and gaps in the prosecution case. As such, they do undermine the weight that can be attached to certain parts of the prosecution case. I refer specifically to the cell site analysis evidence and attempts to compare clothing worn by people on CCTV images.

[26] However, the Crown case against each defendant relies on more than these strands of evidence and the strength of the case against each defendant depends on the weight to be attached to the combination of all of the evidence. Given my decision to refuse each of the applications I do not propose to expand in any detail upon my reasons as at this stage the decision is only a preliminary one. No defendant has been able to refer to evidence that is actually inconsistent with their guilt, rather than being neutral, or on one interpretation, points away from guilt.

[27] The time for a fuller analysis of all the evidence, and what inferences can be drawn from that evidence, will be for later in the trial. At this stage, however, I hold that each defendant has a case to answer and the applications for a direction of ‘no case’ are refused.