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IN THE CROWN COURT OF NORTHERN IRELAND
SITTING IN BELFAST

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REX

v

GLENN RAINEY
WALTER ALAN ERVINE and
ROBERT SPIERS

_____

RULING ON THE DEFENDANTS' APPLICATIONS OF 'NO CASE TO ANSWER'

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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 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

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McFARLAND J

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] G*albraith* 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.

[15] The Crown case is that Rainey, Ervine and Spiers were part of the group of five men responsible for the attack on Ian Ogle which resulted in his death. By their confessions, Brown and Sewell have admitted that they were the other two men.

[16] Following the order in the indictment, I will start with Rainey.
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.

[17] 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 rang 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 2019. 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 the leading man in 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 that 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.

[18] 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. Michael Gannon was using the public telephone on Albertbridge Road and described seeing one man with a long-bladed knife sticking out of his rear pocket, with the knife handle in the pocket. The same man is captured on CCTV carrying what appears to be a knife in his left hand when he is retracing his steps and leaving the scene after the murder.

(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 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 bridge.

(e) 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.

(f) During his interviews Spiers repeatedly told police that he did not own a mobile telephone on 27 January 2019.

(g) 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.

[19] 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 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.

[20] 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 whereabouts of the handsets belonging to 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. Each of the defendants resides, and no doubt socialises, within this general area.

[21] 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 him 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.

[22] 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 this property before or after the murder.

(d) Any inference to be drawn from the DNA evidence is based on a mixed profile with Ervine being a possible low level contributor and 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 physically link Ervine to either, suggesting that he was in their company that evening.

[23] 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 would not be unusual given their friendship. 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 express his opinion 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 in the Belfast area and were also available on-line and by 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

[24] 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."

[25] 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*.

[26] 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.

[27] 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.

[28] 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.