

1 self-serving, and we respectfully say that your Lordship, as
2 the tribunal of fact, couldn't possibly reach the required
3 criminal standard.

4 So we respectfully say that your Lordship should acquit
5 the accused having considered all of the evidence. There
6 is nothing further, my Lord.

7 [REDACTED]: I am much obliged, Mr Orr.

8 MR KERR: My Lord, it's entirely my fault and I apologise to the
9 court, it's just the way the interchange went on between
10 your Lordship and my friend, my friend invited my Lord to
11 start and so perhaps -- (speech interrupted).

12 [REDACTED]: Well if Mr Orr wants to answer anything
13 you say I will allow him to do so.

14 MR KERR: I don't wish to extend the debate very far either,
15 my Lord, and adopt the submissions that have been made.

16 [REDACTED]: Yes.

17 MR KERR: There are only a limited number of points I make. One
18 of the points which was not referred to at the direction
19 stage is this: My Lord will see that in the witness
20 statement that was made by the accused, this relates to the
21 point my friend makes that he has made his case, in the
22 witness statement that was made at a significant passage,
23 the bottom of the first page of the typed version. Sorry
24 there is a mass of additional papers.

25 [REDACTED]: It's the last thing I find of course,
26 yes.

27 MR KERR: "I sat on the wee wall just in front of the church
28 with Jonathan. I could see a body lying on
29 the street, in the middle of the town, it was
30 on the street. The traffic drives up. I

1 didn't see anybody near this person. I

2 didn't see anybody fighting or shouting".

3 Is what he said in his witness statement. In his
4 interviews, my Lord, when one deals with this issue from the
5 passages beginning at page 19 of the depositions:

6 "Aye, there was a man lying on down, there
7 was a body anyway. I found out later that
8 it was a man".

9 Then he goes on to describe the crowd. Then he was asked
10 was there shouting going on, either was shouting going on,
11 and if the court reads the next couple of pages it's
12 perfectly clear that in his witness statement, my Lord, for
13 some reason that is now unexplained, he denies that there
14 was any shouting or any activity by the crowd in relation to
15 the body. And subsequently when interviewed by the police
16 he changes that story. That is now, because he has not
17 given evidence, unexplained.

18 The next matter which was not raised, with respect, at
19 the direction stage, which is now significant in my
20 submission because he has not given evidence, is that if
21 your Lordship checks, and I am subject of course to the full
22 transcript, that although my friend very fully
23 cross-examined Constable Neill as to the circumstances of
24 the identification it was never expressly put to Constable
25 Neill that the accused was not present and the person at the
26 scene. It was never directly put that he was mistaken, but
27 I make no point about that because the whole purport of the
28 cross-examination, my Lord, was as to the circumstances.
29 But it was never directly put. And so the end product now
30 is, my Lord, that the evidence of the constable was not

1 directly challenged as to the main thrust of his evidence in
2 cross-examination and there has been no evidence from the
3 defendant to contradict him in his identification. Now, in
4 those circumstances, in my respectful submission, Article 4
5 comes into play and comes into play in a major way. I also
6 submit, my friend has already dealt with this point and I
7 don't think it necessary for me to develop it, I also do
8 submit in a case of this nature Article 4 in the absence of
9 some very obvious reason, does have great significance in a
10 case of this type because even if the identification is weak
11 and in difficult circumstances it does and can reach the
12 standard, subject to the Court's view as a finder of fact,
13 it can reach the requisite circumstances even if one of the
14 categories that Turnbull says is weak, where it is supported
15 and of course Article 4 permits the silence of the accused
16 not only to be supporting evidence but indeed to be
17 corroborative evidence which is of course a much stronger
18 category of evidence than that required by Turnbull which
19 only requires supporting evidence.

20 So those are the only submissions I have to make over
21 and above -- (speech interrupted).

22 [REDACTED]: If I just put one possible view of the
23 facts to you and ask you for your comment?

24 MR KERR: Yes, my Lord.

25 [REDACTED]: Supposing I were to come to the
26 conclusion that I was not satisfied beyond a reasonable
27 doubt that this accused was part of the crowd who carried
28 out the attack which left Mr Hamill lying on the ground?

29 MR KERR: Yes, my Lord.

30 [REDACTED]: And supposing I came to the conclusion

1 that Constable Neill was right and he saw this, these
2 actions by him at a later stage, but at a stage when the
3 attack had concluded?

4 MR KERR: Yes, my Lord.

5 [REDACTED]: The ultimately fatal attack had concluded
6 and I was not satisfied that the accused had actually
7 delivered any blow, would that leave any room for conviction
8 on the first count?

9 MR KERR: In my respectful submission were those your factual
10 findings, my Lord..

11 [REDACTED]: Yes.

12 MR KERR: ..It would not be appropriate for you to convict on
13 murder.

14 [REDACTED]: Yes.

15 MR KERR: But it would still be open to convict on the second
16 count.

17 [REDACTED]: Yes.

18 MR KERR: But of course my Lord will recall I don't propose to
19 adopt again the Crown suggestion that a joint enterprise in
20 the factual medical circumstances, as we know them, is not a
21 determined issue, in this case.

22 [REDACTED]: I have to look at all that but I'm sort
23 of looking at different views I might take.

24 MR KERR: Indeed.

25 [REDACTED]: I just want to consider that.

26 MR KERR: If those were your Lordship's factual findings as such
27 I couldn't argue that your Lordship should still find him
28 guilty of murder.

29 [REDACTED]: Yes. Well we better give you an
30 opportunity if you want to say anything further?

1 MR ORR: Nothing, my Lord.

2 [REDACTED]: I think you have put your argument very
3 clearly and succinctly. I am grateful to counsel on both
4 sides for their very helpful presentation of the case.
5 Obviously not only is there the basic issue in this case of
6 whether the accused is guilty or not guilty of the offences
7 with which he is charged, there are some other aspects to
8 the case which I think I maybe should refer in the course of
9 my findings. And I therefore set about trying to prepare
10 those and give judgment as soon as possible. I will try to
11 make it soon. Meanwhile if the accused could be remanded
12 in custody.

13 [COURT ROSE 3.00]

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