

1 EW [ON RESUMING 2.45]

2 MR ORR: May it please your Lordship, my Lord, I am grateful to
3 your Lordship for the time. My Lord, the position is that
4 no evidence will be called by the defence.

5 [REDACTED]: Yes. Could I ask you if you have
6 advised your client that the stage has been reached at which
7 he may give evidence and if he chooses not to do so or
8 having been sworn without good cause refuses to answer any
9 question the court may draw such inferences as appear proper
10 from his failure to do so?

11 MR ORR: He has been so advised, my Lord.

12 [REDACTED]: Very good. Well yes, we have made very
13 good progress so far as the evidence is concerned. Would
14 you like to address me today or to leave it to tomorrow?

15 MR ORR: I would propose really to adopt the submissions.

16 [REDACTED]: You have covered a good deal of the
17 ground.

18 MR ORR: It's fairly short.

19 [REDACTED]: I appreciate much of what you say, have
20 said this morning will have to be considered very deeply by
21 me when considering the evidence. But I will be glad to
22 hear you now if that suits, Mr Orr?

23 MR ORR: There effectively would be three matters if your
24 Lordship pleases. The first would be to remind your
25 Lordship that it wasn't relevant at the stage of the
26 direction but is now relevant and that is the right of the
27 jury to stop the trial at any stage.

28 The second matter, if your Lordship pleases, is that
29 the accused has made his case initially in the form of a
30 witness statement on the 9th of May, subsequently at three.

1 interviews with the police and it would be our respectful
2 submission that Article 4 should not be used to bolster what
3 we respectfully submit is a very weak Crown case.

4 As I say, the third matter then, my Lord, we adopt the
5 submissions in relation to the Turnbull case that were made
6 before lunch, and we now say or pose the question 'What
7 reliability can the tribunal of fact place on the evidence
8 of Constable Neill', the crucial fact, the only witness
9 against the accused? And we respectfully say that there is
10 no way that the Crown can get anywhere close to the required
11 criminal standard. We say that for the reasons already
12 given, and that by reason of the fact that there are even on
13 Crown counsel's submissions glaring contradictions within
14 the case. We remind your Lordship that the witness on whom
15 the Crown rely has a self-serving agenda, he has been
16 interviewed under caution about his conduct on the night in
17 question and he still does not know whether or not he faces
18 any charges. And it's difficult to imagine someone with
19 more of a case to make in relation to salving his own
20 position. We respectfully say that when one looks at the
21 evidence of Constable Neill a number of the matters and
22 factors which appear, we respectfully say, would beggar
23 belief. He is in a position where he is pulled out of the
24 Land Rover. He doesn't know the reason for that. He has
25 told your Lordship he asked the man who got him out and he
26 then invites the court to believe the man who was
27 sufficiently motivated to bring him out of the Land Rover
28 and to make comments to the effect: 'you sat there and
29 watched that happen and did nothing' and that when he asks
30 that man 'what is it you're talking about' the man just

1 ignores him. We respectfully say that that just doesn't
2 have even the remotest concept of credibility. If one
3 takes the question that your Lordship asked him during the
4 course of his evidence where he was asked about the break up
5 between the two sexes of the two rival groups and the
6 position is that he cannot say how many, if any, women there
7 were within the Loyalist faction. He fights or is involved
8 in fights with a number of persons and he is unable to give
9 any worthwhile descriptions of those people. He refers to
10 four or five fights and indicates that in his estimate there
11 were eight to ten nationalists. On the evidence we know
12 that at least three of those were women and there's no
13 suggestion that any woman was involved in any fight on that
14 particular night. So that if one deducts three,
15 effectively virtually every one of the nationalists was
16 involved in a fight. One takes account, if your Lordship
17 pleases, of the evidence that he was purporting to identify
18 a stranger in what he accepts was a chaotic situation, what
19 he accepts was momentary. He is unable to give a
20 description of clothing from the waist down, the only item
21 which he does describe is a garment above the waist, no such
22 garment having been found at the accused's home. And
23 particularly one was dealing with a purported identification
24 at a time when he is involved in a fight with at least three
25 other persons. He can't describe any of the three persons
26 with whom he was fighting and yet purports to identify
27 someone who was some distance away from him. And we
28 respectfully say that his evidence is flawed, it is patently
29 deficient, it's at variance with all of the other evidence
30 in the case, it's made against a background in which it is

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