Neutral Citation No: [2025] NICC 21	*Ref:* **2025NICC21**
	ICOS No: **22/068021**
Judgment: approved by the court for handing down (subject to editorial corrections)*	*Delivered:* **01/05/2025**

IN THE CROWN COURT IN NORTHERN IRELAND
SITTING AT LAGANSIDE COURTHOUSE

THE KING

v

DEREK GEORGE LAMMEY
AND
STEPHEN MATTHEWS

Mr Russell KC with Ms Pinkerton (instructed by the Public Prosecution Service) for the Crown
Mr O'Keefe KC with Mr Forde (instructed by Phoenix Law, Solicitors) for the defendant Lammey
Mr Larkin KC with Mr McGuckin (instructed by Phoenix Law, Solicitors) for the defendant Matthews

---

HIS HONOUR JUDGE KERR KC

Introduction

[1] The defendants are jointly charged as follows:

Count 1 Unlawful Assembly contrary to Common Law.

The particulars are that "on the 2nd day of February 2021, assembled with others, in an assembly of three or more persons with intent to encourage the commission of a crime by open force.

Count 2 Affray contrary to Common Law.

The particulars are that "on the 2nd day of February 2021, in the vicinity of Pitt Park/Fraser Pass, Belfast, unlawfully displayed force and made an affray."

Count 3 Intimidation to refrain from doing any Act, contrary to section 1(d) of the Protection of the Person and Property Act (Northern Ireland) 1969.

> The particulars are that "on the 2nd day of February 2021, unlawfully caused by force, threats or menaces or in some other way other persons, namely persons within the Ballymacarret Centre to refrain from doing an act, namely returning to their place of residence."

[2] The defendants pleaded not guilty to each charge. At trial the prosecution were represented by Mr Russell KC and Ms Pinkerton of counsel. Mr Lammey by Mr O'Keefe KC and Mr Forde of counsel. Mr Matthews by Mr Larkin KC and Mr McGuckin of counsel.

Background

[3] On Tuesday 2 February 2021, at around 14:30 hrs police were present on the Lower Newtownards Road in the area of Pitt Park and Fraser Pass. While they were in the area a crowd estimated as between 40 and 50 males dressed in mainly dark clothing and with their faces partly concealed by masks, scarves or other coverings started to assemble. Initially, they were in groups of various sizes but eventually came together and congregated around the Ballymac Friendship centre. There were a number of people inside the centre.

[4] After surrounding the centre for a short period of time the group dispersed. A number crossed over to the Templemore Avenue of the Newtownards Road area and appeared to leave the area. The prosecution case against the two defendants is based on the premise that both defendants were part of this group. That the group were participants in an unlawful assembly and part of an affray. That this was a display of force and that the purpose of the display was to intimidate persons in the centre.

[5] The evidence in the case put forward includes: the observations of three police witnesses who purport to recognise the defendants; CCTV from the area; body worn video camera ("BWV") footage from officers at the scene; and the evidence of a witness in the "Ballymac" Centre. In addition, there were a large number of statements which were agreed and read out in court, a body of statements which the court was asked to consider but were not read out in court, and two sets of agreed facts which were lodged in court and read into the evidence.

[6] The two defendants through counsel adopted a similar approach to the case. Their primary submission was that the prosecution could not prove to the criminal standard that either defendant was part of the observed crowd. The alternative submission was that even if the court was sure/firmly convinced by the evidence that the defendants or either of them was a part of the observed crowd then their established presence and participation did not amount to or establish the necessary ingredients of any of the three alleged counts.

[7] In terms of the issues in this case it is obvious that the first issue to be determined by the court is whether the prosecution have established that the defendants or either of them were part of the group of men observed on the day.

Evidence as to the identification/recognition of the defendants

[8] After the opening of the case the court was shown video evidence to set the scene. The map Exhibit 1, was agreed and then Exhibit 44 was played. One could see the Newtownards Road. It was a dull day, cars on the main road were using lights. A number of men could be seen with dark clothing. A police vehicle could be seen turning off the main road. The camera went to the area of a playground and a large group of men could be seen. All were in dark clothing and their faces were obscured. The movements of the men were followed from 14:52 until 15:03 hrs when the group dispersed with some of them crossing the Newtownards Road towards Templemore Avenue.

[9] The court was then shown Exhibit 38. This showed the movements of the crowd in the area of the Ballymac Centre.

[10] Constable Mallaghan gave evidence. At the time he was stationed at Strandtown. He was on Mobile Patrol with Constable Shevlin. They were the first officers at the scene in the area of the Ballymac at 14:50 hrs. At the scene he activated his BWV. This was Exhibit 40. He observed 40 people, all appeared to be male. Mostly in dark clothing with face masks. They were walking at a normal pace. He followed them to the Ballymac Centre where they started shouting at it. Then they broke up into smaller groups to leave. He did not remember who he recognised first. They passed him within four to 10 feet. Matthews had an Umbro Jacket, Lammey a dark ¾ length jacket. He had seen them many times before. Lammey spoke to him. He recognised and spoke to him. Matthews he had seen many times before, he recognised him by his height and build and face. Both passed his path.

[11] He was cross-examined by Mr O'Keefe, parts of the footage was shown. He confirmed Lammey was at the front. He confirmed he was with Constable Shevlin. He couldn't remember if he could see his hairline. It was put to him that the recognition was not based on facial features. He responded that Lammey spoke to him. He recognised him from his eyes and voice. He could not give the colour of his eyes. In his notebook he had recorded medium height and build. Recognition was as he passed him. He did not accept there was any issue with visibility. He didn't dissent when it was put to him that conditions were not ideal.

[12] He was cross-examined by Mr Larkin. He confirmed he did not see any offence. He recognised him from some of his face, his height and build.

[13] The court was then showed Exhibit 42 which was video of the group including the journey to the Ballymac. One of the men can be heard saying "them fuckers started it not us."

[14] Constable Gray was called. His BWC footage Exhibit 41 was played. He was accompanied by two other officers. He observed a group of 20 men in the vicinity of the Ballymac Centre. He recognised beside Derek Lammey facing him. He also recognised Stephen Matthews who he pointed out. He was wearing a Black Umbro jacket and a bobble hat. Lammey had a football jacket. He observed Matthews for about 10-15 seconds. Later that night he spoke to him at his home address. He had known him for 10 years. He observed Lammey for 10-15 seconds from between 8-10 feet. He had also known him for 10 years. He had spoken to Lammey but got no response.

[15] Constable Shevlin gave evidence. His BWC was played, Exhibit 39. He went to the area around the Ballymac and observed a group of males. He recognised Mr Lammey on the footage this was very quickly and the person also spoke. He was able to recognise him because of how he carried himself, his gait, his voice when he said "watch that covid" his build and part of his face. He had known him for 18 years, he had searched his house twice. He identified who he said was Lammey on the tape. That person was wearing a black hat, NI football jacket, dark Adidas trainers with white stripes and soles, and Adidas trousers.

[16] He identified Stephen Matthews on the BWC footage. That person was wearing a black top, trousers and bobble hat. He had known the defendant for 18 years and had two stop and searches and seen him with others over that period. Despite the hat he could see the top part of his face and also recognised his general build, gait, how he carried himself and "everything else."

[17] The identifications were as the group passed him at close distance.

[18] In cross-examination both senior counsel highlighted the limited view the witnesses had of the person's face. Mr O'Keefe put it that the majority of the face was obscured and asked if his client was of medium height which the witness did not accept. Mr Larkin also suggested that there was very little of the face visible. He put it to the witness that the circumstances of the identification were hardly ideal.

[19] This was the identification/recognition evidence relied on by the prosecution. Before considering the strength or otherwise of that evidence there are other features of the case it is necessary to refer to. As opened and argued the case could be put forward on the basis of an identification case with potentially supporting evidence. Alternatively it could be assessed as a circumstantial case. If considered as the latter the law is clear. In a circumstantial case each strand of evidence need not be established to the criminal standard. Rather each can, if of probative value, be given such weight as the court/jury thinks proper, but when considering the totality of the evidence the court can only convict if the evidence as a whole excludes the reasonable possibility of an innocent explanation.

[20] The further cautionary principle is that if there is any established fact which is inconsistent with guilt that will carry the greatest weight and if that occurs a conviction is unlikely to be justified.

Supportive/circumstantial evidence

(a) Clothing

[21] In Mr Matthews' case the prosecution produced photographic evidence in Exhibit 5 of the defendant wearing a jacket which they submit is the same colour trim, brand, shape and style and fit as the jacket he is observed to be wearing in the BWV. In addition, a search of his property on 17 February recovered a pair of all black trainers which can be seen in Exhibit 4 p16. These are similar to those in the BWV.

[22] In response it is submitted that there is nothing in the evidence to suggest that there is anything unique about them or to counter a suggestion that they are widely mass produced items commonly found throughout the male population.

[23] In Mr Lammey's case, a black hat with a logo was found in his home photographed Exhibit 4 p 11. Further, three pairs of Adidas bottoms were recovered p 12, 13, and 14. Further, a pair of Adidas trainers with white stripes and white soles were recovered p 15. It is submitted that examination of the items with the BWV suggest similarity. It is also submitted as more significant when one considers the cumulative effect of finding all the items.

[24] In response it is submitted that as above there is no evidence to suggest anything unique about the items recovered. However, the defence go further in Lammey's case by suggesting that the failure to find during the search of his home the NI jacket which the person on the BWV was clearly wearing is a circumstance which is inconsistent with his guilt and, therefore, a significant factor which should prevent the court relying on the identification of him or of finding a circumstantial case.

(b) Phones

[25] Cell site analysis of the phones attributed to each defendant was undertaken. The results were before the court as agreed facts. The evidence places the defendants in the area of the incident at the time it occurred which is consistent with the prosecution case. However, the defendants live in that area and so the results would be equally consistent with both or one of them being in their own house at the time of the alleged offending.

(c) Association

[26] On 27 November 2020, the two were seen together in a Ford EcoSport in Pansy Street in the Newtownards Road and followed for some distance by Constable Gray.

[27] On 2 February 2021, the same officer saw Matthews in the same vehicle in the Mersey Street area. The vehicle stopped at Pansy Street and he spoke to him.

[28] On 11 February 2021, the same officer saw both defendants together near the Great Eastern Bar, Newtownards Road.

[29] On 8 February, Constable Beggs saw the defendants and another male standing beside a BMW X4 which was parked outside Pansy Street.

(d) Interviews

[30] No evidence was given in court of any responses in police interviews.

Direction application

[31] At the end of the prosecution case both senior counsel made direction applications on the basis that the circumstances of the identification were so poor that in accordance with *Turnbull,* I should stop the case and find the defendants not guilty of all charges. Further subsidiary submissions were made on the elements of the offences as charged.

[32] In response the prosecution accepted there were issues with the identification evidence but, firstly, they were not of a nature that the case should be stopped and that there was supporting material which a jury could rely on.

[33] I refused the direction applications. I considered that Constable Shevlin, a constable who had known and dealt with both defendants over a period of 18 years had identified both from their general appearance and being able to see part of their faces. The recognition as he perceived it was unhurried and relatively close. In Lammey's case he also had the benefit of hearing his voice. There was, depending on the jury's view of the evidence potential support in the evidence of Constable Mallaghan. There was, depending on the jury's view of it potential support for the identification evidence from the evidence as to clothing.

[34] I considered taking the evidence at its height, that a jury properly directed could convict.

[35] I was informed in turn by each senior counsel that their client did not propose to give or call any evidence. I enquired in turn of each if their client had been advised that the time had come when they could give evidence on their own behalf and that if they failed to be sworn or having been sworn failed to answer any question then the court could draw such inferences from their failure to do so as seemed proper. In turn, each confirmed their client had been so advised.

[36] The prosecution invite me to draw inferences as to guilt against each of the defendants for their failure to give evidence.

[37] On behalf of Lammey substantial written submissions have been submitted which were supplemented by oral argument. The submissions refer me to the history of visual identification. I was referred to Blackstone 2025 F19.1, to May on Evidence 6th Ed para 14.02 and the Devlin Report. It submits that I should apply the *Turnbull* guidelines which are set out in full.

[38] It refers to the case of *Bentley* [1991] Crim L.R 620 and the warning in relation to recognition evidence.

[39] At para [16] it is submitted that there is no part of the face or head that is capable of recognition. The submission made is that "an identification made in these circumstances is inherently weak and unreliable by reason of the absence of any discernible facial feature which forms the basis of the identification."

[40] Referring to the officers purporting to identify it is submitted that Constable Gray gives no basis for his ID and is so weak that it cannot be relied upon. In submissions the prosecution have accepted that the constable's evidence is too weak to act upon or be used as supportive evidence.

[41] In relation to Constable Mallaghan, it is submitted that in response to the comment made by the person suggested to be Lammey Constable Shevlin named Lammey. It is submitted that that fact has led to a real risk that his identification of Lammey was improperly influenced by that remark and should not be relied upon. Further, that the witness did not refer to Lammey in the images shown in court. In addition, it is submitted that he did not rely on any facial features, indeed he only referred to eyes but when asked was unable to give the eye colour. Finally, that his reference to medium height and build was accepted by him to be a description that would apply to a large proportion of the male population.

[42] In relation to Constable Shevlin, it is submitted that he also did not rely on any facial features. He relied on build and gait, but did not purport to say what it was about either that was distinctive. He stated it was "the way he carries himself" but did not elaborate on what that meant. He accepted that he was not an expert on gait.

[43] The witness relied on the words that can be heard on the video played in court. He did not say why he thought it was Lammey's voice or any descriptive basis for so believing. It is accepted he is not a voice expert.

[44] It was submitted that the officers should not be used as supportive of each other. The cases of *Weeder* [1980] 1 Cr App R 228 and *Younas* [2012] EWCA Crim 2022 were referred to for the proposition that a jury must be sure that an identification is correct before they could use it as supportive of other identification evidence. It is submitted that none of the evidence in this case reaches that standard.

[45] The submissions further refer to the case of *Dean Smith* [2008] EWCA Crim 1342, a case involving a police "recognition." In particular, "The court found that absent a record of the basis for the recognition it is not possible to assess the basis for the recognition and there can be no assurance that the officer is not merely asserting that which he wishes and hopes, however subconsciously, to achieve, namely the recognition of the guilty participant."

[46] Finally, it is submitted that the court should not draw any inference from the failure of the accused to give evidence as such inferences are only proper when there is a case that calls for an answer. This case is submitted to be too weak for any inferences to arise.

[47] Written submissions supplemented by oral submissions were also made in respect of the case against Matthews. It is with no disrespect that I say they largely followed the same themes as those cited above. I have read and considered them in full and in particular the submissions as to drawing an inference from the failure of the defendant to give evidence and the cited case of *Beckford* [2004] UKPC 9.

Discussion

[48] It is agreed by all parties that this issue in the case is governed by the *Turnbull* guidelines. *Turnbull* [1977] QB 224 requires me to remind myself "of the special need for caution before convicting the accused in reliance on the correctness of the identifications. In addition, I remind myself that such a warning is needed because of the possibility that a mistaken witness can be a convincing one and that a number of such witnesses can all be mistaken." Further, in this case I remind myself that "recognition may be more reliable than identification of a stranger; but even when the witness is purporting to recognise someone he knows mistakes in recognition of close relatives and friends are sometimes made."

[49] In considering the evidence in this case I must bear in mind that the circumstances of the identification must be carefully considered to assess whether objectively speaking they were conducive to making a reliable identification.

[50] Further, any notes, statements or other materials should be carefully considered such as initial descriptions and any procedures undertaken or followed to ensure the integrity of the evidence when given.

[51] Thirdly, although evidence suggests that the defendants have been associated with each other in terms of statements agreed both before and after the day of this incident I remind myself that the identification evidence as to each defendant is to be considered separately.

[52] In my opinion the physical circumstances for identification were good. This is verified by the video evidence which establishes that the officers were close to the persons identified who passed them. They were obvious and not obscured by any

physical barriers nor by the crowd. They had ample time to make their observations. This was not a case of fast or rushed movements never mind a fleeting glance. Although a rainy and cloudy day the light was perfectly adequate to see the persons who were present.

[53] In relation to the person they have identified as Lammey he had drawn their attention by speaking to them thus directing their attention to him. Although the words were limited they, combined with his appearance, added an element to what led to his recognition. I do not accept that one needs to be a voice analyst to recognise the voice a person.

[54] Constables Mallaghan and Shevlin had known each of the two defendants for an extended period of time and during that time had personally dealt with each of them.

[55] The obvious matter which can properly be described as being a difficult circumstance relating to the identification is the fact that both were masked/obscured at the time of identification.

[56] The effect of this on the evidence is that when both Mallaghan and Shevlin were asked to give details of what it was in the person/s faces in so far as they could be seen, or about their gait, or build or height they were unable to do so.

[57] The reliance on the *Smith* case is referred to in this context. While the *Smith* case has some general relevance to the issues of police identifications it is not the same situation as this case. Unlike this case *Smith* was not a case of identification/recognition at the time of an incident. Rather it was an identification subsequent to an offence from videos. The rationale was that if that procedure was followed then police officers performing that task should record at the time what it was that made them recognise the person in the video. It was to provide some objective standard by which the procedure undertaken could be checked.

[58] In this case the prosecution rely on BWV to establish how the recognition took place which should be considered along with the oral evidence of the witnesses.

[59] On Exhibit 40 Mallaghan's BWV shows four males passing him, "watch that coronavirus" can be heard. His reaction to that can be heard "there's Derek" that was timed at 14:49:12. The BWV shows Constable Shevlin is in front of Mallaghan and to his right. The person identified as Lammey has just passed by Shevlin. At 14.49:19 the words "that's Lammey in the …" can be heard. These are the words suggested that Shevlin spoke. In response to that Mallaghan said, "yep."

[60] Exhibit 39 is Shevlin's BWV at 14:49:12. The person identified as being Lammey says "watch that coronavirus" that person is very close to Shevlin as he passes. After he has passed Shevlin turns to Mallaghan and says that is Lammey in the blue coat.

That is timed as stated above and is clearly after Mallaghan has already named Lammey as the speaker.

The evidence in relation to the defendants on this issue

(a) Lammey

[61] The defendant has been visually identified by two officers. Both officers have known him over a number of years. The circumstances of the identification/recognitions can be seen on video. The opportunity to see was good. There were close to him. They had a clear view of the person identified walking, his general physical appearance and part at least of his face. Although masked some of the face was visible. Neither was able to identify any specific characteristic of his physical appearance as determinative of the recognition but in my view subject to that, the evidence is of sufficient value to merit reliance being placed on it.

[62] The person identified spoke to the police present. This is recorded and his position vis a vis the witnesses can be seen. The defence have submitted that Shevlin was heard to identify Lammey at that stage. It is submitted that that influenced Constable Mallaghan and thereby effectively contaminated not just the purported recognition of his voice but also the visual identification of him by Mallaghan.

[63] Having examined the evidence from the BWV I do not accept that submission. On the contrary, I consider that the evidence shows that both Shevlin and Mallaghan, officers who had known him for years and had had direct dealings with Lammey, reacted to the voice of the person they were observing by independently identifying Lammey. I have considered and reject the suggestion that such evidence can only be given weight if it comes from an expert in voice analysis.

[64] I consider the evidence adds considerable strength to the visual identification evidence given. The idea that two officers with their experience of Lammey would both independently within seconds of hearing a person speak both wrongly identify the speaker they were observing as Lammey is extremely remote and does not leave the reasonable possibility of an innocent explanation.

[65] The prosecution have submitted that the recognition evidence is supported by cell site analysis. I do not accept this proposition. The cell site analysis places him in an area which would include his home. It does not exonerate him but does not implicate him. It is neutral in character.

[66] The prosecution have further submitted that evidence of clothing recovered on a search of Lammey's home on 17 February, some 15 days post incident provides support for the recognition evidence. Photographs were taken of a black hat with a logo, three pairs of Adidas bottoms, and a pair of blue Adidas trainers with white stripes and a white sole. They do look similar to clothing worn by the person

identified as Lammey. However, the clothing is generic and no particular unique or specific mark or identifying feature was put forward.

[67] In addition, one of the most prominent items of clothing worn by the person identified was a NI jacket. No such jacket was recovered. It is submitted that this failure to find such an item not only is significant as to the clothing evidence but has a wider effect. It was submitted that the failure to find such an item was a circumstance which pointed to the person identified not being the defendant and as such was inconsistent with his guilt. I have considered this proposition and do not accept it. There are many reasons why an item may not be found in a search conducted 15 days post incident.

[68] In summary I consider that the clothing evidence is neutral.

[69] I also consider that the evidence of association between the two defendants falls into the same category. The fact that they have been seen together before and after the relevant day might in some cases assist the court, in other cases it might be argued that both were identified because police anticipated both would be together.

[70] In an agreed statement of facts it is established that Lammey was asked a number of questions in interview relevant to his movements of the day in question and the identification of him as being present. He gave no answers to questions.

[71] The final matter to consider is the failure of the defendant to give evidence having been advised that his failure to do so without reasonable excuse may allow the court to draw such inferences as appear proper under Article 4 of the Criminal Evidence (NI) Order 1988. I have been referred to *Murray v DPP* [1994] 1 WLR 1. The principles therein make clear that drawing an inference is not proper in every case. If the case against the defendant is weak then it should not be done.

[72] An inference is permissible where the case against the defendant is strong or where it contains evidence which only the defendant could explain. Further, an inference should only be drawn where the court decides that the silence of the defendant could only be attributed to the defendant having no answer or none that would stand up to cross-examination.

[73] I remind myself of the dangers in identification evidence and the reason for the warning. In my view the combined effect of the two visual identifications and the two voice identifications establish the presence of the defendant as part of the group observed to the criminal standard.

[74] If I were wrong about that then I consider they would provide a strong prosecution case which calls for an answer and that the failure of the defendant Lammey to give evidence can only be attributed to the fact that he has no answer that would stand up to cross-examination.

[75] I am sure/firmly convinced that the defendant, Lammey, has been properly identified and was part of the group observed by police on the day in question.

(b) Matthews

[76] The primary evidence against this defendant is the visual identification of him by both officers, Shevlin and Mallaghan.

[77] As in the case of Lammey the circumstances in which the observations were made were good. They can be assessed on the BWV. The were made from a close distance. They were made over a significant period of time, the viewing conditions were good.

[78] This defendant was also masked and the witnesses relied in their evidence on a general description of the defendant. It was averred that part of his face was visible in particular his eyes. However, neither Constable Shevlin nor Constable Mallaghan gave any evidence of any specific characteristic that they could rely upon as demonstrating the accuracy of their evidence.

[79] As in the case of Lammey the various matters called in support could be considered. The cell site analysis was similar and neutral. The association evidence also. In Matthew's case the clothing evidence consisted of a photograph of him on a different occasion wearing a black Umbro jacket similar in style, brand and trim as that worn by the person identified as him. In his house a pair of all black trainers was recovered similar to those worn by the person identified.

[80] There was no specific mark or way of identifying the clothes and again they were generic. It could be said that the evidence provided some support but not at an evidentially significant level.

[81] There are agreed facts to show that when interviewed the defendant was asked specific questions about his movements/location on the day, the offences alleged and his association to Derek Lammey. He remained silent during the interviews.

[82] The defendant declined to give evidence. He had been advised that failure to do so might lead to inferences being drawn against him by the court.

[83] I have considered the state of the evidence. Although there is clear evidence of identification by two officers who knew him, the evidence was general in nature and did not contain specific information which he could be expected to explain in evidence. I did not consider the evidence so compelling as to require an answer and, therefore, I do not consider inferences should be drawn against him for his failure to give evidence.

[84] As I am not sure or firmly convinced that he was present at the scene I must acquit him of the charges. I find Matthews not guilty on all counts and he should leave the dock.

The evidence as to the crowd

[85] As I have decided that Lammey was part of the crowd, it is necessary to set out the evidence as to what the crowd was observed to do. It is clear that no suggestion has been made or advanced that the defendant was part of the crowd but was not fully aware of its actions or intent.

[86] The attention of the crowd was to the Ballymac Centre. Early in the trial, evidence was given by Ms Toni Johnston, who was in the centre when the crowd converged on it. At about 13:30 hrs that day she was at her aunt's house which was in the Pitt Park area. From information received she and her family went to the Ballymac Centre. There were a large number of people there. Doors were locked from the inside, the shutters were down. From an upstairs window she could see a crowd of men wearing dark clothing and masks. There were up to 39. She was terrified by their behaviour. She saw police outside but felt no reassurance. She asked the police if she could leave to go to her home in Dundonald but was advised to stay in the centre.

[87] Agreed evidence from a Constable Kingsberry was that 12 officers were in the Pitt Park area as 30-40 males approached "with purpose". They were belligerent and were soon joined by another group. When together the total reached almost 100. Another officer Constable McCrory described the men as "like they were on a mission. A pre-planned move."

[88] Another officer said, "it appeared sort of intimidating. They were all heading toward Pitt Park … It appeared organised and with a purpose … A member of the public pulled up beside us quite distressed and fearful of something ... I have no doubt she was frightened of the gathering." A Constable Lyall said, "I believed that if we intervened, confronted or attempted to remove the males from the area there was a severe potential for public disorder and/or injuries to persons."

[89] It became clear the centre was the focus. Constable Gracey describes a number aggressively shouting "you yella bastards." Others appeared to be shouting at someone in the centre, encouraging them to come out.

[90] The crowd's actions are shown in CCTV and body worn video (BWV). In Exhibit 44, the defendant can be seen with the crowd, in Exhibit 38 he is seen as one of the first group at the Ballymac Centre. He is also seen at the time he made his comment as apparent on the BWV as referred to earlier. It is clear that he was fully part of, and a verbal member of, the group.

The charges

[91] On Count 1, the charge is unlawful assembly. The particulars are that on 2 February 2021, he assembled in an assembly of three or more persons with intent to encourage the commission of a crime by open force.

[92] The offence of unlawful assembly was defined in *Gilmore v SOS NI* [1995] NI 46:

> "An unlawful assembly of 3 or more persons with intent to commit an offence by open force, or to carry out any common purpose whether lawful or unlawful, in such a manner as to cause reasonable people to fear a breach of the peace."

[93] On behalf of the defendant it is argued that there was no display of open force. There was no evidence of common purpose. It is pointed out that police were present and none observed force being used. None saw behaviour they classified as violent. I am referred to agreed evidence of Constable Miller p 36, Constable McCrory p 41 and Constable Mallaghan. I accept that this is the tenor of the evidence that was given. There is evidence of a degree of shouting and verbal abuse to those within the Ballymac Centre but after that relatively short period of time the crowd moved back from the area and dispersed with out incident. I am not satisfied to the appropriate standard that the evidence establishes either that open force was displayed or that the established intent was to commit a crime by open force. Accordingly, I find the defendant not guilty of Count 1.

[94] I do have to say that had the charge been the second limb of the definition as given in *Gilmore* then my decision would have been different.

[95] On Count 2, the offence is affray. The particulars are that the defendant "on the 2nd day of February in the vicinity of Pitt Park/Fraser Pass unlawfully displayed force and made an affray."

[96] The prosecution case is effectively that the large group of men all wearing dark clothing and masked constituted a display of force.

[97] In NI the offence is a common law offence. I have been referred to a number of local and English authorities on affray. In the recent case of *McGinley* [2025] NICA 11. Treacy LJ stated that affray consisted of "participating in a fight with one or more persons in a public place when the conduct was such as would cause a person of reasonable firmness present at the scene to fear for his personal safety. The crime is not merely fighting in public but includes the impact on members of the public." I note this definition does not refer to such a person being terrified.

[98] The prosecution referred to *Sharp* [1957] 2 WLR 472 which states "there has been a real disturbance of the peace by two persons fighting in public or endeavouring by a display of force, though without necessarily using actual violence to overawe the public."

[99] Archbold 42nd Edition is referred to: "Affray is a common law offence whose elements are: (i) unlawful fighting by one or more persons or a display of force by one or two persons without actual violence; (ii) in such a manner that reasonable people might be frightened or intimidated; (iii) calculated that is reasonably expected to terrify a person of reasonably firm character." In *Murray* [2011] NICC 18 it states, "It typically involves a group of people shouting, struggling threatening waving weapons, throwing objects, exchanging blows etc.

[100] In *Murray* [2015] NICA 54, the court states:

> "The offence consists of a violent disturbance of the peace by one or more persons which takes place in such circumstances as to cause terror to one or more persons of reasonable firmness. The most common form of affray is a fight between two or more men or groups of men which terrifies bystanders. The disturbance of the peace may be a display of force for example brandishing an offensive weapon without actual violence."

[101] I have considered the evidence in the light of the authorities. I am not persuaded that the behaviour of the crowd or parts of constituted a display of force as required for the offence, nor was there actual violence. Neither actual violence or a display of weapons nor behaviour suggesting an imminent risk of fighting has been established

[102] Further, although the witness Ms Johnson stated she was terrified, I must consider whether what occurred was objectively terrifying to a person of reasonable firmness. I am not persuaded it was.

[103] I am not sure or firmly convinced that the relevant elements required to convict of affray have been established, so I find the defendant not guilty of that offence.

[104] Count 3 is intimidation. The particulars are that he "unlawfully caused by force threats or menaces or in some other way other persons namely persons with in the Ballymacarett Centre to refrain from doing an act namely returning to their place of residence."

[105] The evidence of Ms Johnson is that the centre at the time was in absolute chaos, there more that 10 people there, doors were locked from the inside. Doors were closed, the shutters went down.

[106] The movements of the crowd as shown in Clip 1 Exhibit 38, where groups went past the centre, the shouts including "you's are protecting them, You's are letting them in and out that's what you's are doing." Exhibit 42 at the centre "There they all are, come on out come on out big lad(s) you yellow bastards they're all in the centre, by the way them cunts started it not us" coupled with the dress and masks and the way the crowd moved and broke up in a co-ordinated fashion are clear indication that the centre was the object of the plan and the clear intention of all present including the defendant who was seen at the centre was to intimidate those inside it and the keep them there by refrain from going to their respective homes.

[107] The shouting constituted menaces both direct and indirect as did the numbers and dress of the participants in what could be described as a show of strength.

[108] I am sure/firmly convinced that the defendant is guilty of intimidation in Count 3 of the indictment.