

IN THE CROWN COURT IN NORTHERN IRELAND

BELFAST CROWN COURT

THE QUEEN

-v-

AARON THOMAS WHITE

GILLEN J

THE CHARGE

[1] In this case the accused Aaron Thomas White is charged that on 11 October 2003 he attempted to murder Michael Liam Reid contrary to Article 3(1) of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 and common law.

THE PROSECUTION CASE

[2] The prosecution case was that on 10 October 2003 Michael Reid had gone to visit a friend John Hodge at an address in street X in Harryville ("address A in Harryville"), Ballymena at about 10.00 pm. Hodge had eventually gone to bed and left Reid on his own downstairs where he had fallen asleep on a settee. It was alleged then that the accused, initially on his own, came to the house, engaged in a conversation with Reid and then left. Shortly thereafter he returned with two other men and some beer. After questioning Mr Reid about his name and whereabouts, Mr Reid was attacked with a cable around his neck, a saucepan, and lacerated with a knife a large number of times. The accused played a leading role in orchestrating the attack. He was told:

“We are going to kill you you Fenian bastard and you are going to die”.

[3] Feigning death, Mr Reid halted the attack but that Aaron White then directed a saw be obtained to cut up his body. When two men left, leaving a third to guard him, Mr Reid made his escape and eventually met up with the police who took him to hospital. One man, Neill White the brother of the accused has already pleaded guilty to attempted murder. I shall outline the rest of the Crown case in the course of my summary of the main Crown evidence.

[4] I now turn to the main witnesses in this case:

EVIDENCE OF EYE WITNESSES

MICHAEL LIAM REID

[5] This witness stated that he was a Catholic and on 10 October 2003 lived in the Ballymena area. On that date, in the course of the evening he had visited three pubs in Ballymena from about 6.00 pm onwards. He described drinking a pint in one, a pint of harp/guinness in another, and a couple of pints of guinness in the third. He had quarrelled with his girlfriend in the first bar. Just before 10.00 pm he had made his way to the home of a friend, Johnny Hodge, who lived in address A in Harryville in Ballymena.

[6] Once at Hodge’s house, he had sat chatting to him until Hodge had gone to bed. Mr Reid then had fallen asleep on the settee, having woken up on one occasion to request from Hodge a quilt.

[7] Soon after this, a man knocked on the door. Mr Reid answered it and that person identified himself upon request from Reid as Aaron White and asked if Johnny was in. That man was wearing glasses which were round in shape and tinted. He was about 6 foot tall with short dark hair and about the same age as Reid. Mr Reid asked him if he played in the same band as Johnny - which he had remembered from a previous conversation with Hodge was the Protestant Boys flute band. Aaron White said that he did. They chatted together. Reid asked whether or not Aaron White wanted him to rouse Hodge but he said he did not. Aaron White then said to him, “What’s the craic with you”. Reid had told him that he was friendly with Johnny and asked him if he wanted to put on some music. Aaron White had said, “Fuck the stereo”. After that he left saying he would be back within 5 to 10 minutes. He lifted the stereo and left. Reid sat on and had a cigarette. About 5 or 10 minutes later there was a further knock on the door and upon answering it, Reid saw Aaron White with two other males behind him. He began to feel nervous. They came into the living room after him.

[8] Reid then sat on the settee and Aaron White sat on the armchair facing the window. According to Reid, Neill White his brother stood beside the fireplace. They had a case of tennents beer with them. They offered him a can and he took one.

[9] They then started asking him questions - who he was, his name and where in the town he had come from. Mr Reid said that he answered them truthfully giving his name and where he lived. After about 5 or 10 minutes, he noticed Aaron White slowly nod at his brother who walked to the kitchen behind the settee upon which Reid was sitting. Mr Reid was nervous and he was looking for an excuse to leave. He wondered what Aaron White was up to and was watching him out of the corner of the eye.

[10] He then felt a cable round his neck which pulled him down into a seat. He automatically put his hand around his neck and managed to get his fingers under the cable. He unsuccessfully tried to pull the cable from his neck and tried to rise up from the settee. He was pulled to the right side of the settee and armchair.

[11] The person he then described as "man two" came in front of him and banged him over the head with a heavy object. He felt blood coming down his head and it was very painful. He said that he was in a state of shock and "did not know what was going on". The cable was still round his neck and he was being strangled.

[12] The cable then went slack and then tightened up again as if someone was changing hands. He heard someone behind him saying, "Go get a knife. Go get a knife". Aaron White's brother Neill ran into the kitchen and came out with a knife in his hand. It was a small flat knife like a bread knife. He ran to his left hand side and stabbed Reid about the back, inside the left hand side. At this point the witness pointed to the lower back on his left hand side.

[13] Mr Reid said that he knew that there constant blows to his head, he was being strangled and being stabbed at the same time. He felt really bad, really scared and did not know what was going on.

[14] He started to get stabbed about the neck and shoulder. He wasn't sure how serious his stab wounds were and he was not sure if he was going to live or die. He was bleeding heavily.

[15] Mr Reid continued to struggle until he felt his strength going and began to get dizzy. He thought that if he played dead and let his body go limp, they would possibly stop.

[16] The witness described that he was 6 foot 4 inches tall.

[17] The men were saying, "We are going to kill you you Fenian bastard and you are going to die".

[18] He let his body go limp and did not move at all. At this time he was in front of the fireplace. He fell onto the floor on his right hand side. The cable continued to be pulled around his neck. Eventually he felt it go free.

[19] He started getting kicks around his legs and blows on his head. They gradually stopped.

[20] He then heard voices saying, "Oh shit we have killed him. Is he dead?".

[21] Mr Reid said he was lying motionless on the floor at this stage with his eyes open. The three men went into the hallway to discuss what to do with the body.

[22] His evidence was that Aaron White was telling his brother to stay to make sure he was dead and to guard the body. He told the other man to get a saw to cut him up. Reid's evidence was that Aaron White said this.

[23] Aaron White and the third man left the house.

[24] His brother Neill was left standing at the entrance to the hall.

[25] Mr Reid said that he lay there motionless to let them get away for may be a minute or less. He then got up and ran to the door. Neill White seemed a bit shocked. He had a knife in his hand at that stage. He swung it at Mr Reid to his left hand side.

[26] Mr Reid said that he grasped his hand and started struggling with him. He grabbed White about the throat, threw him against the door, head butted him and got the knife up to him. Mr Reid said that he held the knife up to his chest. White then let him go and he got out of the door.

[27] Mr Reid then claimed there was another person outside and he ran into him. That person tried to stop him and a struggle ensued in the course of which Mr Reid fell on top of him. He asked him to let him go. Mr Reid's evidence was that this man saw the knife in his hand and he let him go.

[28] Mr Reid then ran down street X in Harryville to the junction with street Y. He was naked from the waist up. He ran to the junction with street Z. He tried to stop one vehicle with his hands on the bonnet but this driver reversed and drove on. The witness then continued on to the bridge near the Women's Refuge where he could not go any more and collapsed. He then saw a police vehicle coming and waved it down. A police woman asked him what

happened and he told her that Aaron White and his mates had given him a kicking and attacked him.

[29] He was then taken to Antrim Hospital where he remained for 4-6 days. His throat was swollen up and he had difficulty breathing. He could barely move his head. Mr Reid claimed he was cut all over and it was very painful. He described scars all over his head including the left of the head and the back. There were also scars round his ears but they are not that visible now. Also on his shoulder.

[30] He concluded his evidence in chief by indicating that he moved from Ballymena shortly after this and has left Northern Ireland now.

[31] In the course of his cross examination by Mr Mateer QC, who appeared on behalf of the accused with Mr Laverty, the following points emerged:-

[32] Mr Reid said that when he spoke to the police he told them that Aaron White and his mates had given him a kicking and attacked him.

[33] At the hospital he did not recall speaking to Detective Constable Orr on two occasions.

[34] Turning to the start of the incident in Hodge's house, he said that he did not know any of the people involved in this beating.

[35] Mr Reid's evidence was that Aaron White was of similar height to him about 6 feet tall. He had short hair. He was wearing a yellow top with dark writing on it and dark jeans. He did not recall the height of the writing. He thought that it was a long sleeved shirt. He recalled that all four men had local Ballymena accents and there was no other particular feature of their accent that he recalled.

[36] Mr Reid said he was in a state of shock during this incident while being attacked and in a state of heightened fear. When he had said that he did not know what was going on this did not mean that he was disorientated. He meant by this that he didn't know why they attacked him but he did know what was going on. He was very alert. The witness claimed that he became aware it was a sectarian attack. He did not think about that at the time. By the use of phrase "I did not know what was going on" he meant that he did not know why they were doing it. He refused to accept that his perception of events was reduced.

[37] Mr Reid repeated that he heard words to the effect of, "Oh shit we have killed him. Is he dead?". He was not sure if this indicated an element of surprise and he repeated that he heard words to that general effect.

[38] When he was feigning death he glanced up and saw Aaron White say, "You stay there and make sure he is dead." He said he did not move his head but his eyes were already open. He moved his eyes and claimed he definitely saw White say these words. He claimed he glanced up and saw Aaron White's lips move.

[39] The witness conceded that he did not say in the course of his statement to the police that he saw his lips move. He said that was because today was the first time he had been asked about this but he did remember it every day since and he was certain he did glance up and see Aaron White.

[40] He said that all the voices sounded pretty similar with Ballymena accents.

[41] Mr Reid said that it was Aaron White who instructed the man to get the saw to cut the body up. He was still glancing up when he saw Aaron White say this. It was said within a few seconds of the earlier comments about him being dead. He claimed he was looking in his general direction at this time.

[42] These two men then left leaving a third person, Neill White, who he did not know at that time.

[43] He again repeated how he had grappled with Neill White and got the knife from him. As they exited the house he had the knife in his hand.

[44] Mr Reid described once more struggling with the fourth man outside. That man had let him go in light of the knife in Mr Reid's hand. The struggle put them both to the ground.

[45] He was shown the overturned bin in photograph No 3 in exhibit 12. He did not recall if the bin had been in that position when he went into the house. He was not aware if the bin was knocked over in the struggle. However the struggle would have been in the area of that bin. When he was struggling with this fourth man outside he had no shirt on and was dripping blood from the wounds to his head. He could not be sure if the blood was dripping into his eye although at some stage the blood had been dripping into his eyes.

[46] Questioned about the amount of drink he had taken that evening, Mr Reid acknowledged that he had had, "a few drinks". Stating, "I wasn't entirely drunk either" in answer to a question whether or not he was not entirely sober. He asserted however that he did not think he was drunk. He did not recall telling the police that he had had some cider in the morning. The witness had been at a party the night before this incident and had been

drinking to 4.00 am. However he asserted that the alcohol in the previous 24 hours had no effect on him.

[47] Dealing with the conversation that he had had with the police at the hospital, he said that a number of police had spoken to him there. He tried to give them a truthful and complete account. When he was asked if he had told them that Aaron White had slowly nodded to his brother to initiate this attack, he asserted that he did tell this to the police. He agreed that this scene could be an important part of the events because it was a signal. However he asserted that this statement had been made a long time ago, he could not remember exactly when he had made it to the police and it had been signed after he had got out of hospital although he had told the CID at the hospital what had happened.

[48] Finally Mr Reid said that he did not know any of the people who had come to street X in Harryville prior to the events of that night and he only knew that this man was called Aaron White because he told him that was his name.

[49] I found the evidence of Mr Reid to be compelling and plausible. He was clearly a man who looked to be depressed and spoke in flat monotones. He did not at any time look at the accused during the course of his evidence and seemed to have turned his body sideways to him. I was satisfied that he had a clear recollection of the events of this night. I do not believe that the drink he had consumed materially interfered with his recollections of the events that he described as unfolding. Apart from the fact that the chilling events that he related would in my experience remain in the mind of most people subjected to such an attack, the manner in which he gave his evidence satisfied me that he had a clear and accurate recollection of events. Doubtless he was shocked by the attack upon him but I was satisfied that when he said that he did not know what was going on, he genuinely did mean that he did not understand why they were doing this to him. I watched him carefully when he was cross examined about whether or not he had actually seen the man who described himself as Aaron White speaking the words that were at issue. I was convinced that he was telling the truth about this. I was also satisfied that the detail which emerged at the trial as to the circumstances in which he was attacked were accurately and truthfully related by him.

SAMANTHA McAULEY

[50] This witness, now aged 19, recorded that on 10 October 2003 she had been celebrating her birthday with some friends initially at the Moat Bar and thereafter at the Tullyglass Hotel. They had left about 1.30 am in a taxi to go to street X in Harryville. Initially in her evidence in chief she said she was completely sober but she had had some drinks. They arrived at street X in Harryville at about 1.45 am. Initially she went to her sister's. There she

claimed that she saw three men at the top of the street. She described them as Aaron White, Neill White and another "boy" whose name she could not remember. She then went to Aidy Mitchell's house to a party at a second address in street X in Harryville ("address B in Harryville"). She related that she met Aaron White down the street before she went to Adrian Mitchell's house. He had asked her her age and said, "Is this the kindergarten day out?". He was wearing a dark coat and jeans and wore dark glasses. At that stage she said she "knew of him". She did not later see Neill White. The witness then went to Aidy Mitchell's house. She was sitting there when Aaron White came in. He was agitated and "bouncing about the room". He was talking to Aidy Mitchell. He said, "Do you want to kill a Taig". Another person Ray Agnew was also there and he was talking to him. Agnew was trying to calm Aaron White down. Aaron White didn't want to calm. He said, "You know the craic here. Under no circumstances let anyone in next door". The witness said she was scared. She left to go to the toilet in her sister's again and then returned to Aidy's. Coming back down the street she looked into the window in the house next door to Aidy Mitchell's. She saw two men who looked as if they were arguing. The men were Aaron White and Michael Reid. The house in which they were was Johnny Hodge's house. She went back into Aidy Mitchell's house. Whilst there she heard a bang like a thud that came from next door. She mentioned this to Aidy Mitchell. She concluded her evidence in chief by saying that she knew of Aaron White for about 2 to 3 years.

[51] Before she was asked to identify Aaron White in the witness box, an issue arose as to whether or not this was a dock identification. At that stage I was unsatisfied that the ground had not been laid for such an identification. Accordingly Mr Murphy QC who appeared on behalf of the prosecution with Mr McCrudden asked a series of further questions. In response the witness said she had known of Aaron White for 2 years. She claimed she saw him once per week over 2 years at the Raglan Bar, Ballymena. She said she didn't know where he lived. She knew his girlfriend Sarah who used to work in the video shop in Cullybackey. Ms McAuley would have spoken to her from time to time but she knew no one else in his family. She said she saw him once per week at the Raglan Bar but she did not know anyone he was with on those occasions. The witness also claimed to have seen him at the Moat Bar in Ballymena possibly at the weekends although this had just been on a couple of occasions. Apart from the bar she did not see him anywhere else. She never saw him and his girlfriend Sarah together and she had no idea how long she was Aaron White's girlfriend. Over the period of the couple of years Ms McAuley did not see him in any other occasion save in the bars. She confirmed that the Aaron White she saw on the night of 10 October 2003 was the same person that she had seen in the Raglan Bar. On the basis of that evidence, I permitted her to point out a man she said was Aaron White in court in the dock. I was satisfied that this was one of the instances referred to

in the textbooks where the evidence showed that the witness was well known to her and that an identification parade would have been unnecessary.

[52] In cross examination by Mr Mateer QC the witness claimed that she had a very clear recollection of this evening. She had spoken to the police and made a statement in April 2004 approximately 6 months after the incident. She had not written down anything in the interim. In April 2004 when she made her statement to the police she had been relying solely on her memory.

[53] The witness claimed that between October 2003 and April 2004 she had not spoken to anyone about what she had seen and heard that night. She claimed that although she had been in the company of a number of people who had been in Aidy Mitchell's house that night, no one had spoken to her about the events and no one had raised the issue with her. She claimed that she put the matter out of her head entirely between October 2003 and April 2004.

[54] When questioned about the three men that she claimed to have seen at the top of street X in Harryville at about 1.45 am when she had arrived, she again said that they were Aaron White, Neill White and somebody she did not know. She said that she did not know Neill White but someone had told her since that he was Neill White. She then said that occurred the following day and it was her cousin Kerry Cahoon who had told her. She was unable to remember how the matter had come up in conversation. She had in fact stayed with Kerry Cahoon on the night after this incident. After she left the party she had stayed with her sister Victoria.

[55] Turning to the conversation with Kerry Cahoon, Ms McAuley said she asked who these men were and Kerry Cahoon had said one was Neill White. Counsel then asked her why did she ask who they were if she already knew Aaron White. She replied that by the phrase, "I asked who they were" she meant the other two apart from Aaron White. Kerry Cahoon had been with her at the party at Aidy Mitchell's. The witness again asserted there had been no conversation about the events of the previous night. There was no reason why they did not talk about it.

[56] The witness claimed that she had been every weekend at the Moat Bar. She saw Aaron White at the Moat Bar but had not been introduced to him. She went to the Raglan Bar with her aunt. She was going there two years by the time of the incident. From the age of 13 she went every Saturday. She said that probably someone said that this is Aaron White. She had never had a conversation with him before this night.

[57] On the question of the drink she had taken that night she said that no one bought her drinks and she bought her own drinks. She described having a w.k.d. which is an alcopop namely a quantity of lemonade and vodka. This

was the first time she said she had had alcohol. She was in the Moat Bar until about 10.30 and then they decided to go the Tullyglass. She had not more than one w.k.d. in the Moat Bar. Everyone chipped in to pay. The same people who were in the Moat Bar went to the Tullyglass Hotel. She had three other bottles of w.k.d. there.

[58] The witness said that the drink did not make her drunk. It had no effect on her. She then said that she was not saying she was completely sober but she was not drunk. Counsel reminded her that earlier on she had said she was completely sober. Attention was drawn to the police statement she had made. She accepted now that the drink could have had an effect on her in that she was tipsy. She had told the police, "I was a bit tipsy but I wasn't drunk". However she asserted in court that she was, "Sober enough". Pressed as to why she had originally told the court that she had been completely sober, she said she did not know why she had said that but she was not trying to minimise the amount of alcohol she had taken.

[59] Ms McAuley said she did not take any drink at Aidy Mitchell's. She had been to parties at his place before but she didn't know that there would be drink there. She said she did not drink at the earlier parties that she had been at his house and she was not sure if anyone else had taken drink. Drink was available however at his house in the form of beer. There were no spirits or w.k.d. There was no one there in a drunken condition that she could remember.

[60] Turning to the alleged meeting with three men, it was put to her that she was wrong about that. Initially the witness claimed that she saw three people and that she could not remember if there had been a fourth or not. She said the three were Aaron White, Neill White and she didn't know the third. She claimed she never found out the identity of the third. However after being pressed about this, she then said that she did know the third man who was Mojo Mitchell, Aidy's cousin. She had known Mojo for a couple of years. When questioned further on the matter she said she did not know how it came about that she told the court she did not know the identity of the third man whereas now she said she knew him well. Ms McAuley claimed however that she could not remember seeing a fourth person there.

[61] The statement she had made to the police on 26 April 2004 was then read to her. In it she had said:

"We met Aaron White, Neill White and Nigel Mitchell who I know as Mojo and there was another man with him who I didn't know."

[62] The witness accepted that her memory was probably better in April 2004 than it was now. She therefore accepted there probably was a fourth man that

she did not know. She went on to recall that the men at the top of the street walked down the street. They were altogether. She went into her sister's house to the toilet and when she came out she again saw them. She did not really have a conversation with them but she was asked her age and it was said that it was "kindergarten night out". She remembered Aaron White wearing a dark coat but could not remember if it was zipped up or not.

[63] It was put to her that she was mistaken about Aaron White being in Aidy Mitchell's house but she said that whilst she did not see him coming in he did come into the house.

[64] Counsel again turned to her statement and pointed out to her the following extract:

"As Victoria, Thomasina and I walked down the street I saw Aaron White, Neill White and Mojo standing in the street talking to Kerry. The other male had walked on down the street into Jonah's house - next door to Aidy's".

[65] The witness said that when she was going into Aidy's house she saw them approach the house.

[66] Counsel then dealt with her allegation that in Aidy Mitchell's house Aaron had said, "On no account let anyone go next door". The witness gave evidence that Aidy Mitchell had probably said something to him when he said this but she could not remember. She said she wasn't interested in the conversation and she didn't know what the conversation was. She only heard part of what was said. Again she claimed that Aaron White said, "Do you want to kill a Taig".

[67] Pressed as to why she had looked in through the window of the house next door i.e. Johnny Hodge's house when she was walking down from her sister's home back to Aidy Mitchell's house, Ms McAuley said she had made a mistake about the house she was going to and that was what made her look in to the house at address A in Harryville. She was then shown the photographs of the window in the house next door exhibit 12 at pages 1 and 2. Those windows did appear to be covered in the photograph but she said that she could see a little bit. She said she saw the view clearly. The two men were in each other's faces. She said that they were Aaron White and Michael Reid. Pressed by counsel however she said that she did not know Michael Reid. She had heard since then who he was but could not remember who told her. She was told a couple of weeks later who he was but could not remember the circumstances or the identity of the person who had told her. The witness had not heard during such a conversation about what had happened on that night and had had no conversations about the events of that evening.

[68] Turning again to the view of the two men in the house next door, she said Aaron White was on the chair against the wall and Michael was on the sofa. Aaron was on the chair facing the window. She could not hear what was being said. Initially she said that she did not see the man she claimed was Michael Reid going in. However her police statement was then put to her in which she had said:

“As Victoria, Thomasina and I walked down the street I saw Aaron White, Neill White and Mojo standing on the street talking to Kerry. The other male had walked on down the street into Jonah’s house - next door to Aidy’s”.

[69] Later in her statement she said:

“I looked in the window of a house and saw Aaron White sitting in the chair facing the window with his back against the wall and he was arguing with the male I saw earlier on, who was sitting at the end of the sofa next to the kitchen door”.

[70] Initially the witness said that this was wrong. However when pressed about the matter she then said that this was correct and that the man she described as Michael Reid was the man she had seen earlier on with the other three and the man she had seen going into the house.

[71] Counsel then revisited the question of when she had seen Aaron White prior to this incident. Ms McAuley accepted that it could be that she had not seen him in the bar after the year 2000. Upon being pressed about the matter she said that she had seen him before she was aged 13 i.e. the year 2000 in the Raglan Bar and perhaps only a couple of times after she was 13.

[72] I found this young woman confused and nervous as her evidence progressed. There is no doubt in my mind that she was attempting to do her best but I consider the passage of time and the stress of the trial have served to introduce uncertainty and confusion into her mind in some respects. I did not accept that she had never discussed this matter after the incident of 10 October 2003. I do not accept that she would have failed to discuss the events of that night with Kerry Cahoon if she was ascertaining the identity of Neill White. Similarly I do not accept that she would have ascertained the alleged identity of Michael Reid without discussing the incident concerned. Her evidence that it was the fourth man in the street who had gone into Johnny Hodge’s house and was subsequently the person arguing with Aaron White simply does not fit the evidence of Michael Reid. It clearly would be completely contrary to his evidence to suggest that he was ever with Aaron White outside address A in

Harryville on that night in question. Moreover according to Michael Reid there was no question of any argument between him and Aaron White when the two of them were alone together. I find this account by this witness to be at variance with the other facts and confused and unreliable.

[73] Her account of when she saw Aaron White in the past was confused at the end of her evidence although it was clear and unequivocal at the start of her evidence. Initially she left the impression with me that she had seen him regularly over 2 years immediately before the events in question whereas when pressed by Mr Mateer and subsequently by me, it looked as if she had seen him before the year 2000 i.e. before she was 13 in the Raglan Bar and only a couple of times since then. Whilst I was convinced by her demeanour and manner that she genuinely felt she did know Aaron White by sight, and gave a detailed account of her exchange in the street with him, I resolved to be extremely cautious about the weight I would give to any aspect of her evidence in the absence of some supporting evidence.

RAYMOND JAMES AGNEW

[74] As appears from a separate judgment that I have given in this case I admitted the statement of Raymond James Agnew, now deceased, to be read. He gave evidence of having spent the evening of 10 October 2003 until about 10.30 pm in Kernohan's Bar in Ballymena and thereafter the Tullyglass Hotel. From there he and a number of friends went to Aidy Mitchell's house at street X in Harryville at about 1.40 am. He said of his arrival:

“By this stage I would have drunk two or three pints at the darts and six or seven vodkas at the Tullyglass. I would have considered myself rightly on but I knew what was going on. We went straight into Aidy's house in [street X in Harryville], I not sure of the number but it is on the right hand side near the bottom of the street. The door was open and Aidy was standing at the door and we went straight into his living room”.

[75] In the course of that statement he referred to “Victoria's cousin's 16th birthday that day”. His statement also records that “Mojo, that is Nigel Mitchell, was sitting on the ground floor round the floor with Adey”. His statement goes on to relate:

“I was in a couple of minute when Aaron White bounced in the door ranting and raving, he stood at the door with both feet in the living room. He had his arms up and was waving them in the air. He shouted “I'm going to kill a Taig, I'm going to kill at Taig” or

something very similar, but definitely “Kill and Taig” was in it. He then walked out. That was the first time I had seen Aaron that night. I have known Aaron for at least 14 years and know he lives up in Lettercreeve. He was wearing a pair of glasses, they were oval in shape and I think they might have a tint in them. He was wearing a dark coat, I’m not sure if it was navy or black. It was slightly longer than a bomber jacket. It had a zip up the middle which I think was zipped up to the top as I don’t remember seeing anything below it. He had nothing in his hands and was wearing dark jeans and I think a pair of trainers on his feet. He was only in the house for a matter of seconds shouting and raving and bounced back out and shut the living room door behind him.”

EMMA THOMPSON

[76] This witness was the sister of Samantha McAuley. She had gone to the Moat Bar in the course of the evening of 10 October 2003 in the company of a number of her friends to celebrate her sister’s birthday. Leaving at about 10.00/10.30 pm, they had gone to the Tullyglass House where they remained until about 1.00/1.30 am. Thereafter they went to street X in Harryville by way of taxi. She entered Aidy Mitchell’s house and was sitting on the sofa. She did describe that she had been drinking and although she admitted she was fairly drunk/tipsy she was not drunk. She said she was fed up, sick, sleepy and wanted to go home. Whilst she was there a man stood in front of her and kept them all going about being very young like a kindergarten. She described him as having a dark coat and tinted glasses. She said in a sarcastic way, “Is the sun shining”. She then closed her eyes and dozed. Counsel cross examined her to the effect that she had been drunk and that was why she was feeling sick and sleepy. The witness asserted again that she was not drunk.

[77] I was satisfied that this witness was telling the truth. She did not seek to embellish her evidence in any way and I was convinced that she had a good recollection of what had happened that night notwithstanding that she had taken some drink. In particular I felt I could rely on her description of the man who appeared in front of her wearing a dark coat and tinted glasses. She remembered the terms of her conversation with him which underlined her recollection of him wearing tinted glasses. The relevance of this of course is that it lends some weight to the suggestion of Samantha Macaulay and Mr Agnew that Aaron White was there in so far as they described him as wearing tinted glasses. Whilst Ms Thompson did not purport to identify the accused her description of such a man with tinted spectacles adds weight to their evidence.

MR ADRIAN MITCHELL

[78] The final witness in the Crown case, Mr Adrian Mitchell, was tendered by the prosecution. He was cross examined by Mr Mateer. The witness recalled that Mr Hodge lived next door. He claimed that he was not sure if Mr White was friendly with Hodge or played in the same band. On the evening of 10 October 2003 he had been playing darts in the Moat Bar and thereafter had gone to the Tullyglass Hotel with some friends. He then had gone to a party at his own house. He could not recall if Mr Hodge had brought a stereo to him or not. When he arrived back at street X in Harryville he had waited outside for about 15 or 20 minutes as other people arrived. He claimed that he was drunk that night. He recalled various people being at the party. He then took the dog out to exercise when he noticed the door of address A in Harryville was open. He saw the body of a man in there and he phoned for the ambulance. He claimed that he did not see Aaron White that night at the party at his house. When re-examined by Mr Murphy he said, "I did not see Aaron on the street that night".

[79] I pause to observe that Mr Mitchell looked extremely nervous during the entire course of his evidence and presented as someone very uncertain, vague and obviously concerned about the evidence he was giving. He was hesitant before answering and I regarded him as a singularly unimpressive witness. He did not give the impression, by virtue of his demeanour and manner, of being a witness who was sincere in his belief in what he was asserting.

FORENSIC AND SCENES OF CRIME EVIDENCE

JOHN LOGAN

[80] This witness was the Principal Scientific Officer at the Forensic Science Northern Ireland.

[81] On 12 October 2003, with Jason Bell from the FSNI, he attended address A in Harryville, Ballymena to identify and comment on the blood distribution present in the premises.

[82] He found the hallway heavily smeared with splashed and drips of blood on the floor. Directional splashes of blood were present on the wall at the foot of the stairs. These had been projected outwards from a source at a low height in the living room. Smears of blood were present on the door

frame of the living room. Splashes of blood were also present on the hall side of the living room. Splashed blood was present at a low height on the outer surface of the front door indicating it had been opened when the blood was projected into it. DNA samples of this material matched those of Mr Reid.

[83] In the living room the furniture had been disarranged. Cushions had been displaced from the settee and arms and a broken table lay on the settee. Clothing was present on the floor. A saucepan was present on the floor beside the fireplace.

[84] Near the door to the hallway and extending across the floor to the fireplace heavy deposits of smeared blood were present. A denim jacket, lying on the floor on front of the fireplace was extensively bloodstained and lay over smeared blood on the floor. Similarly the seat cushion adjacent to the jacket was also heavily bloodstained on both sides and lay over bloodstaining on the floor. This would indicate that these items had been displaced during the deposition of the blood. Extensive smearing of the blood over this area would indicate direct contact between the floor and some heavily bloodstained item.

[85] A pattern of large drops of blood and a footprint in blood was present on the floor beside the right side of fire breast. Large drops of blood were also present on the right side of the fireplace hearth. Immediately above this pattern on the floor there were numerous smears of blood on the wall. This was up to a height of 180 cms. At this height there was a fresh chip out of the paint and plaster. A pattern of fine splashes of blood radiated up the walls on to the ceiling and outwards across the walls from that point. The pattern of splashed blood would be consistent with one or more impacts to a heavily blood soaked object positioned close to the fire breast. The blood drops on the floor appeared to have dropped directly from an open wound.

[86] Several splashes of blood were found on the wall between the kitchen and the living room. These had the appearance of cast-off blood and could have been created by the rapid movement of a heavily bloodstained item.

[87] Samples were taken from eight areas of bloodstaining in the living room. Three of these were DNA tested and they matched those of Michael Reid.

[88] Mr Logan's conclusions were that the living room gave evidence to support the proposition that Reid had been struck whilst standing at the right corner of the fire breast causing blood to be spread on to the adjacent walls and ceiling. Blood also dripped directly on to the floor and hearth from an open wound at this position to indicate that Reid either stood or was held in this position for a short period after the wound was open.

[89] The distribution of smeared blood on the floor, in the area stretching from the left edge of the hearth to the hall door and the distribution of the bloodstained seat cushions would be consistent with there having been a struggle on the floor during which these were displaced.

[90] Blood splashing on the living room/kitchen wall could have been thrown off a heavily blood soaked item whilst it was being swung in the living room.

[91] Blood on the wall at the light switch and adjacent door frame could have come directly from the hands or clothing of Reid or they could have been transferred from the hands or clothing of any one else who had been in direct contact with Reid after he was injured.

[92] The witness also examined a number of items which included the following:

- (1) A stainless steel table knife with a region of the blade edge serrated near the tip. The knife had a slight bend where the blade joined the handle. It was extensively smeared with blood over most of its surface. None of this blood was DNA tested.
- (2) A heavily bloodstained shirt was found but not DNA tested.
- (3) An extensively bloodstained blue denim jacket was found but not blood tested.
- (4) A small grey/green saucepan with a black plastic handle. The base and side had been indented. Splashed blood was present on the sides, on the inside and on the upper side of the handle. The saucepan was observed on the floor of the scene resting near the right side of the fireplace. The distribution of blood on its surfaces would be consistent with blood dropping directly on to it similar to that on the adjacent floor. The blood samples matched those of Michael Reid.
- (5) A blue handled kitchen knife. The blade had been bent through a 90° and a small fragment of the blue plastic handle broken away. A lightly smeared bloodstain was present on both sides of the blade near the handle. DNA analysis of a sample of this showed it to match that of Michael Reid.
- (6) Two swabs were taken from a pair of glasses. Swab one showed traces of blood which on a DNA analysis matched that of Michael Reid. No blood was detected on swab two.

[93] The conclusions of Mr Logan were that the shirt showed damage and bloodstaining consistent with being worn when blood was shed in the living room at address A in Harryville. The damage to the saucepan would suggest that it had been used as a weapon. The absence of blood on its base would indicate that it had not been used subsequent to blood being shed. Blood on its side and upper surfaces originated by some passive means such as dripping from an open wound directly on to the saucepan and adjacent surfaces. Both knives showed signs of deformation and bloodstaining. Neither knife was sharp or pointed and neither would provide a particularly effective weapon. All the blood tested from address A in Harryville matched that of Michael Reid.

[94] In cross examination Mr Logan accepted that the stainless steel knife which had been examined, if used in a stabbing/jabbing motion could penetrate soft tissue. In his opinion it could penetrate into the organs of the body although he could not tell what force would be necessary other than that it would need more force than a sharp knife. However the degree of force necessary could be generated by a human being.

[95] So far as a plastic knife was concerned, this was a mass produced cheaply constructed thin blade. It was easily bent and deformed. Less force would be needed to deform it than the previous blade.

[96] He was closely cross examined about the blood found at marker 2 in photograph 4 and 7 of Album 12. Shown marks in photograph 8 he indicated he did not know if this was blood on the bin in question. All that he could say was that it was red staining. If it was blood it had the appearance of contact staining. It did not give the impression of finger marks. It was rather the appearance of contact stains coming off something bloodstained for example a garment.

[97] Dealing with the bloodstains at marker 2, this had the appearance of blood. He accepted that when blood drops on to a surface, this can cause satellite splashes. If a larger droplet falls on to a moveable surface e.g. a shoe then a smaller droplet than the original droplet can come off. That would cause the blood to be applied to any other items on the floor. The blood in photograph 7 could be consistent with there being dripping blood.

[98] Counsel then put a proposition to the witness that Mr Reid could have been bleeding in the area marked 2 and dripping blood, involved in a struggle with another man, both on the ground with Mr Reid on top of the other man and the blood would be on the ground having come from Reid. Mr Logan indicated that there was no evidence of any smearing of the blood in photograph 7 and if it was falling in the manner described he would expect some smearing. These rather looked to him like passive droplets of blood. So as far as the blood in photograph 9 of Album 12 was concerned - outside the

doorway, it was difficult to tell if there was smearing here due to the wetness of the ground. He was loath to comment save to say that he could not say if there was any smearing or not there. He went on to say that if the blood soaked man was on top in the example given that would not lessen the smearing. Droplets will be smeared. If the droplets occurred after contact i.e. he stood up and bled passively, it would depend upon the profusion of blood as to how much was deposited. A large wound for a short time could deposit equally with a small wound for a long time. He accepted that the blood spots in photograph 6 could be deposited from a splash on to a primary surface that was moving. It was suggested to him that the blood found on the spectacle of Mr White, in photograph 4, could be where a person dripped blood onto a shoe and that it could be a secondary deposit on to the spectacles. The witness indicated that he would not favour the theory that the blood had dripped on to the shoe and then on to the spectacles although secondary deposits can be droplets.

[99] I found Mr Logan's evidence clear and compelling.

TREVOR COOKE, SCENES OF CRIME OFFICER

[100] This officer attended at address A in Harryville on 11 October 2003 at 05.05 am. He noted a pair of glasses on the roadway and he placed a marker No 1 beside them (these were shown at photograph 4 in Album 12). He also saw blood on the pavement and put a marker 2 beside that. This blood is shown at photograph No 7 in Album 12. He seized the glasses and took samples of the blood on the pavement. On the glasses he noticed a small speck of blood on one of the lens on the left hand side. (This was shown in photograph 6 of Album 12). He observed damage to the outer door frame of address A in Harryville and pieces of broken door frame lying outside.

[101] At approximately 5.30 am he carried out a visual examination of the area and saw heavily bloodstained areas in the hallway and a black electrical wire wrapped up in a bloodstained shirt (see photographs 11 and 13 of the Album 12).

[102] The witness saw into the living room where there was blood in the hall and living room on the floor and walls. He noted bloodstained clothing including a tee shirt on the arm of the chair and a denim jacket on the settee (see photograph 18 in Album 12). The first denim jacket he saw was on the floor. The second denim jacket he saw was on the end of the settee.

[103] He swabbed the blood from the glasses on 14 October. He examined them for fingerprints but with no result.

[104] In cross examination he was questioned by Mr Mateer about the markers at 1 and 2. He could not recall if they had been covered before he arrived

although photograph 4 of Album 12 clearly showed that there were dry areas, in an otherwise wet road, giving the impression they had been covered. Blood was in the general area of 2. He could not rule out small spots of blood surrounding the area of the glasses although he only saw one small speck of blood on the glasses. I recorded at this stage that it was somewhat difficult to discern if certain spots on the road were blood or not.

MARTHA WARE

[105] She was also a Scenes of Crime Officer who went to the scene at 10.56 am on 11 October 2003. She observed a bloodstained shirt with a wire cable in it at the bottom of the stairway. She described the bloodstained ceilings and walls. She also discovered two mobile phones. One was beside the chair near the kitchen door (see photograph 35 of Album 12) and another mobile phone beside the television (see photograph 23 of Album 12). In addition she observed a bloodstained saucepan and some broken glass. She further discovered a blue plastic handled knife under a chair. It was below the cushion pictured in photograph 20 of Album 12. In the kitchen itself there were three glasses on the bench and a bottle of tennents beer on top of the fridge. She packaged the various items for examination. No cross examination was made of this witness.

[106] I pause to observe that a number of continuity witnesses involved in the various transfers of the materials to the laboratory for examination were unchallenged.

MR McCONNELL

[107] This was a Forensic Scientist employed with the Forensic Science in Northern Ireland. He examined the two mobile phones found at address A in Harryville namely the mobile phone found beside the television and the nokia mobile phone found elsewhere in the living room. His evidence was significant for the following reasons:

[108] On the mobile phone found beside the television at address A in Harryville, the message history included two relevant messages. First, dated 3 October 2003 at 19.54 hours, a message stating:

“Yo Aaron wee Albert here you cudnt lend me, 50 pound and I will pay it back on Wednesday afternoon”.

[109] A second on 19 March 2003 at 11.41 hours stated:

“Alrite, the man with the plans another year older!!
Have a g d one Aaron, keep it real!! Have a blessed
day, u r a star!! Marko sarahs bro”.

[110] The implication was that this was a reference to a birthday and it just so happens that the birthday of the accused is dated 19 March 2003.

[111] In addition this witness gave evidence of two deleted statements which he had discovered on the mobile. The first was dated 10 October 2003 at 10.15 which stated:

“Arron charlie wants 2 no will u lend him that or not
he for work at 11”.

[112] That purported to come from an Adie Mitch. A further from the same source i.e. Adie Mitch constituted a deleted message of 6 October 2003 at 14.51 hours which read:

“Aaron, its Dick will u lend me a 10 till Wed till I get
my book am only home from the graveyard reply”.

[113] The purport of these messages was to the effect that this phone was clearly that of the accused Aaron White. Not only was the sender of the messages using the name Arron, but the two of them at least came from Adie Mitch who presumably would be Aidy Mitchell. One of the messages was a birthday greeting to a man called Arron on precisely the same day that the accused had his own birthday. I was satisfied that on the basis of that evidence this mobile phone had clearly been in the possession of the accused.

**WALTER McCORKELL, A SENIOR SCIENTIFIC OFFICER AT THE
FORENSIC SCIENCE NORTHERN IRELAND, WHOSE SPECIAL
EXPERTISE IS PHYSICAL METHODS INCLUDING ANALYSIS OF
FOOTWEAR MARKS AND OTHER PHYSICAL ITEMS**

[114] He examined a phone charger, a length of wire and a wire ligature found at the scene at address A in Harryville. A comparison of the ends of the wire sheathing and the ends of the sheathing found in the mobile phone charger indicated this physically fitted together. The results indicated that the charger, the length of wire, and the jack plug were all originally a continuous length. I was satisfied that the wire has been used around Reid’s neck.

MEDICAL EVIDENCE

ANDREW ROBB

[115] This was a registered medical practitioner who was acting as surgical registrar the Accident and Emergency Hospital at Antrim at 3.25 am on 11 October 2003. He described the condition of Reid when he was admitted.

[116] Mr Reid gave a history of having been out drinking when he was "jumped". He said he was stabbed a number of times. He was treated with drips and intravenous fluids. He had approximately eleven lacerations around his left ear, two on his ear, one just below the left ear, one below the jaw, one on the abdomen, six on the left side of the chest and about seven on the scalp. There were about sixteen lacerations in all. These were superficial lacerations. The laceration to the left shoulder received five sutures. There were multiple scalp lacerations which were treated with clips and sutures. Dr Robb indicated that these lacerations were superficial involving the skin and fat layers. Neurologically Mr Reid he was alert but drowsy. He had glaucoma scale 14/15 only opening his eyes when he was spoken to, his body temperature was low and he was admitted for observation.

[117] In cross examination Dr Robb indicated to Mr Mateer that the patient had no life threatening injuries on primary or secondary surveys. The injuries were superficial. The swelling to his right hand could have been consistent with him giving a punch or alternatively could have been caused by direct force to the hand. The history he gave was vague and he didn't remember much about it.

[118] If the lacerations had not been treated they would probably have healed themselves.

VALERIE PENNY

[119] This witness was a qualified optometrist who held the qualifications of BSc Hons and MB Optom. She had been qualified for over 20 years and was the director of Specsavers Opticians in Ballymena. On 14 October 2003 police had showed her a pair of spectacles which she examined. She put these lenses into a foci meter machine which identifies the prescription lenses. She also checked the frames in which the lenses were mounted. She was able to say that the lenses were stocked by branches of Specsavers Optometrists and had Specsavers written on the frame. She checked the records held by the branch for Aaron White of 132 Lettercreeve Ballymena. The lenses of the spectacles shown to her by the police had the same prescription as Mr White. The frames shown to her by the police were the same as the frames supplied to Mr White with lenses fitting his prescription. Mr White had an unusual stigmatism described as up to 8. She described his eye being like a rugby ball with different power in one axis to another. High stigmatism of this degree is very uncommon.

[120] She was also able to say that the frames shown to her by the police were the same as the frames supplied to Mr White with lenses fitting his prescription. The number of the frame, the name of the frame and the size all fitted the records held for Mr White. The number of the frame was 1001076. The frame size was 49 mm by 21 mm on the bridge. The name of the frames was Anzac. The glasses had a brown tint and this also appears on Mr White's record.

[121] On cross examination the witness indicated that that stigmatism can go higher than 8 although she has never seen anything higher than 10. The glasses had been prescribed on 19 September 2003 although she did not do the dispensing. He also got two pairs of glasses made up at the time. One was into a different frame with a grey tint. It was of a different make namely Baron. White had been prescribed glasses with a grey tint in 2002 and three sets with a grey tint in 2001. The only one with a brown tint was this one.

[122] As a result of the evidence of this witness I was satisfied that the glasses which Detective Constable Orr had brought to her and were said to have been found lying outside address A in Harryville, were the glasses of Aaron White the accused.

EVIDENCE OF THE POLICE OFFICERS

[123] There were several police witnesses to prove the maps and photographs.

[124] A number of police officers gave evidence of being in a vehicle on Saturday 11 October 2003 at about 2.30 am when they saw Mr Reid at Millhouse on street Z in Harryville. It is unnecessary for me to deal with each aspect of their evidence save to say that the collective effect of their evidence was to show that the victim was bare from the waist up and he appeared to be covered in blood from his head to his waist. He seemed to be heading towards Harryville Bridge. He was given first aid treatment. There appeared to be a lot of blood on his face, head and torso. Constable Ennis asked him what had happened and he said that Aaron White had done this. Constable McAllister spoke also to Reid. He said that Reid said to him, "They tried to kill me". He also said that Aaron White had assaulted him with a knife and bottle. He said, "They were trying to kill me". Constable Archibald said that Aaron White tried to kill him at street X in Harryville with a bottle or a knife. Constable Archibald had asked him to repeat this and he said, "Aaron White tried to kill me with a bottle or a knife". Constable Pijl gave evidence of attending on Reid. The evidence of other police officers was read to similar effect.

[125] In cross examination Sergeant Boyd indicated that she felt that Reid was still bleeding when they saw him. This was also the view of Constable Pijl.

[126] One officer said he smelt alcohol off Reid whereas another did not.

[127] A number of these police officers then went on to the alleged scene of the crime at address A in Harryville. They saw blood and bloodstained items over a large part of the downstairs area.

[128] Constable Ennis saw a male lying in the living room covered in blood. He was moaning and groaning and not fully conscious. The police officer could not find any puncture wounds and put him into the recovery position and the ambulance then arrived. He described a large volume of blood in the living room along the walls and furniture.

[129] He went upstairs in address A in Harryville and there naked and asleep was the householder John Hodge who identified himself to him. He had been sleeping in the front bedroom. Constable McQuitty came upon the same scene. He checked the man in the living room downstairs who was lying there and he was crying out, "My neck, my neck" and couldn't breathe. The man downstairs who gave the appearance of being injured was Neill White. He was known to Constable Caldwell as the brother of Aaron White.

[130] Inspector Hayes gave evidence that as a result of information given to him, he then carried out a search of three properties - namely the home of Aaron White, the home of his mother and the home of a girlfriend in the early hours of the morning of 11 October but the searches were negative. There was also a search carried out of a derelict building at a third address in street X in Harryville but nothing was found.

DETECTIVE CONSTABLE ORR

[131] This police officer spoke to the victim Reid within a few hours of the attack and whilst he was in a hospital bed. D/C Orr received from him the allegations that he made. He had made no note that at any time Reid had told him that at the time of his attack he saw Aaron White nod his head slowly to the other men as a signal. The officer told the court that he had about four pages of notes which were reasonably detailed. These were an initial follow up to give guidance to police and it covered the history of what had happened. If it had been a full witness statement he would have gone deeper into the matter. I pause to observe at this stage that I did not find this omission on the part of Mr Reid to be significant given that it was made within a few hours after the attack upon him and whilst he was in a hospital bed. One could not expect him to remember all details at that stage especially

since the purpose of the meeting was to give guidance to police and not a full detailed witness statement.

DETECTIVE CONSTABLE EMMA NEILL

[132] This was a Detective Constable in the Police Service of Northern Ireland. She attended address A in Harryville before 10.00 am on 11 October 2003. She made a visual examination of the scene. She was able to look through the door and the window to see into the house. She saw in through the window from the street. There were vertical blinds which she could see through. She saw blood on those blinds. She also recorded seeing the spectacles and the spots of blood on the outside. At 11.15 am she spoke to Mr Reid at the local hospital where he gave an account of what had happened.

[133] This witness gave evidence that Neill White, the brother of Aaron White, had been arrested and charged with attempted murder. On 16 September 2005 he entered a plea of guilty and was sentenced to 16 years. She produced the certificate of conviction.

[134] Ms Neill indicated that continuing efforts had been made to apprehend Aaron White. Steps were taken to locate him over the next two years. Various searches in Northern Ireland and outside the jurisdiction were made. On 20 October 2004 police visited and spoke to his parents. Arrangements were made throughout this period with other people for him to attend with his solicitor but he did not appear. Several arrangements were made for him to attend. On 30 October 2003 an arrangement was made through his solicitor. Detective Constable Neill said that she was briefed that he would attend and she was to conduct the interview. Several other police officers had told her to expect his attendance on 30 October as a result of an arrangement with his solicitor. Arrangements were made by acting Inspector Montgomery. He did not attend however.

[135] On cross examination the witness accepted that she was unaware as to whether there was any legal obligation to come although he was to be arrested. A decision had been taken that he was to be arrested by the police.

DETECTIVE CONSTABLE HARPER

[136] This officer gave evidence of arresting the accused on 7 October 2005 at an address in Kansas Street, Ballymena.

DETECTIVE CONSTABLE DOUGLAS

[137] This was a Detective Constable in the PSNI attached to Ballymena CID. On 7 October 2005 he conducted a series of interviews with the accused accompanied by Detective Constable Harper. The accused's solicitor, Mr Monteith, was present. Throughout the interviews, in general terms, the accused did not make any comment at all. It was specifically alleged to him that he was involved in the incidents already described at addresses A and B in Harryville on 10/11 October 2003. He made no comment on any question put to him about the manner in which he was alleged to behaved and spoken at address B in Harryville and what he had done at address A in Harryville. He was also shown a number of exhibits for example the telephones and asked specifically about the telephones and the message references on them referred to by Mr McConnell. Again he made no comment. He was also shown the pair of tinted spectacles recovered outside address A in Harryville on 11 October 2005 when it was alleged that the spectacles belonged to him with details of the blood of Mr Reid being found on the lens. Once again he gave no response. This officer also charged the accused with the offence and he replied, "Not guilty".

THE DEFENDANT'S CASE

[138] Mr Mateer in the course of an application that there was no case to answer - which I refused and which is the subject of a separate judgment which I have handed down - and again at the conclusion of the case, made the following points on behalf of the accused:

[139] Mr Reid's evidence was flawed and unreliable in the following respects:

[140] His account of Aaron White nodding slowly to one of the other assailants prior to the onset of the attack on Mr Reid had not been given by him to Constable Orr when he had been spoken to in hospital in the aftermath of the attack.

[141] He was unable to state who had directed someone to "get a knife" in the house. There was no evidence who uttered that remark.

[142] Reid accepted he did not know the accused or anyone else prior to the assault. All the men had Ballymena accents and there was nothing more distinctive about them.

[143] He had glanced in the direction of the man he said was Aaron White and saw his lips move when giving the instruction to obtain the saw when Reid feigned death. He had not given that evidence to the police when he made his police statement. His excuse was that he had not been asked before and Mr Mateer questioned his credibility on this basis.

[144] The opening of the case had been on the basis that the people in the room had said, when Reid feigned death, “we fucking killed him”. In fact the evidence emerged as the men saying, “Oh shit we have killed him”. Mr Mateer said that this was clear evidence of a lack of intention to kill and evidenced surprise that he had apparently died.

[145] The court should have regard to the actions of the assailants and those actions did not evidence intent. He indicated that the knife could have been plunged into an organ whereas in fact simply lacerations occurred. The actions did not meet the language of intent which had been alleged in this case. The lacerations were superficial, there was no evidence of a stab wound to the neck or other vital organs and indeed according to Dr Robb the injuries would have stopped bleeding themselves.

[146] Mr Reid had given evidence that blows had been rained on him but there was nothing in the medical evidence to back this up.

[147] The evidence of how the accused was dressed – a description by Reid of a man wearing a yellow shirt – did not fit in with the evidence of others who alleged the accused was in street X in Harryville. Their evidence was that he was wearing a zipped up dark jacket. Mr Mateer argued that this was an important weakness in the description of Reid.

[148] Mr Reid in his exam in chief was willing to concede “he did not know what was going on”. Whilst he attempted to resile from that, this was indicative that he had been a man on a pub crawl earlier on, drinking the night before, took cider in the morning and was therefore unreliable in his evidence.

[149] Mr Reid’s evidence that he had escaped outside address A in Harryville dripping blood is hard to fit in with Mr Logan’s evidence who did not see any smeared blood in area No 1 in photograph 12 which might have been expected had he been grappling on the ground with the fourth man as he suggests.

[150] Mr Mateer reminded me that each party, including the accused, against whom a charge of attempted murder was preferred had to be proved guilty beyond reasonable doubt. The specific intent for the charge of attempted murder had to be proved against this accused and reliance on the admission of his brother pleading guilty was wrong.

[151] Mr Mateer argued that the evidence of Ms McAuley was hopelessly flawed. In particular:

[152] Adrian Mitchell makes no reference whatsoever to the damning utterances that Ms McAuley asserts the accused made in Mitchell’s house .

[153] Her account of looking into address A in Harryville and seeing the chairs that she alleged Reid and the accused were sitting on do not match the evidence of Mr Reid.

[154] She pointed out the fourth man as being the man who entered the house at address A in Harryville and who allegedly was Michael Reid. This was self evidently not correct.

[155] Samantha McAuley accepts that she was tipsy and her evidence given the nature of the drink she had taken should be treated with enormous circumspection. Her denial that she had discussed this matter since the incident damaged her credibility.

[156] Her evidence to the police was given 6 months after the event and was riddled with inconsistencies. Initially she claimed she saw three males at the top of the street and only latterly in the course of her evidence remembered that there was a fourth man and that she knew who he was namely Mo Jo. Her evidence about her knowledge of Aaron or Neill White was unreliable. On two occasions in her examination in chief she said that she knew "of him" when referring to Aaron White. At the end of her evidence, she purported to accept that she may not have seen him subsequent to the year 2000. Mr Mateer asserted that her purported recognition was worthless.

[157] Counsel asserted that the prosecution was relying on her to establish intention from a man that she did not know, in whose conversation she was not interested in apparently and whose evidence was wholly uncorroborated by Mr Mitchell.

[158] Prosecution counsel had been wrong to state that there were "spots" in the opening on the spectacles found outside address A in Harryville. In the event there was only one spot which he argued could be consistent with being deposited outside the scene of the attack.

[159] The weapons used, namely the knives, were very ineffective weapons.

[160] The mobile phone which was allegedly connected with the accused contained a sim card. A sim card is removable and that in itself presented a flaw in the argument that the phone necessarily had belonged to the accused. The phone evidence, having the last message on 8 October 2003, had not established sufficient proximity to the accused to allow an inference to be drawn that the phone was his or in his possession on the night of the attack on Reid. It is possible in any event that even if it was his phone it had been left on a charger in the house (a charger was found in the house) some days before the incident occurred.

[161] So far as the spectacles are concerned, he did have other spectacles from the same optometrist with a grey tint. The pair that were found could have been left there for some time in address A in Harryville which was the home of a friend of the accused. There was no explanation how they got outside. There had been an altercation with a fourth man outside when the bin became knocked over perhaps and possibly this is when the glasses fell off. This would mean that the accused was not the person conducting the assault inside the house. In any event the evidence of a man wearing tinted glasses could well be a complete coincidence with the finding of the glasses outside address A in Harryville.

[162] Mr Mateer contrasted these findings with items being found e.g. in an isolated lane somewhere. The contrast with the present situation was that mobile phone was found in the home of a friend and the glasses a short distance outside. Accordingly they could have been there entirely innocently.

[163] Whilst counsel recognised that an inference of intent could in some circumstances be drawn from the nature of the attack that was not so in this instance. The ligature was totally effectual and did not cause any lasting or significant injury. If a necessary intent had been really in evidence, then a dinner knife or one of the bottles found or some other more lethal weapon could have been used. Whilst clearly by his own admission the brother of the accused had an intention to kill, that does not mean that the accused had a similar intention.

[164] Dealing with Mr Agnew's evidence, counsel argued that his evidence was also flawed. He reminded me that this evidence could not be challenged in cross examination and I should be very slow to accept this instead of the oral evidence of Mr Mitchell. Agnew accepts in his statement that he had been drinking heavily and cannot provide a definitive version of the words that he alleges were used by the accused. Just as McAuley's evidence about the words used were from a wholly discredited witness, similarly the words alleged by Agnew are from a man who is now deceased, is unable to be cross examined and in any event because of his drink consumption cannot be relied .

[165] Counsel argued that the interviews should not be the source of any adverse finding by the court because the accused had not relied on anything in his defence which he had omitted in the course of the interviews. His right to silence remains intact.

[166] Mr Mateer emphasised that this was a largely circumstantial evidence based case. He drew my attention to the contents of Blackstone 2007 Edition on Criminal Practice at paragraph F1.10.

[167] Counsel urged that I should not draw any adverse inference from the accused failure to give evidence. In the first place this was a circumstantial

evidence case and a weak one in Mr Mateer's submission. The right to silence had not been abrogated by the legislation. The oral evidence given in this case was insufficient and no material weight should be attached to it. The evidence of the mobile phone and the spectacles was equally deficient because it did not indicate any guilt on the part of the accused. This evidence was manifestly weak and the accused could not have added anything to it by giving evidence. There were perfectly innocent possibilities arising out of the evidence before the court.

[168] Mr Mateer also argued that Mr Mitchell had been called as part of the Crown case. It would have been expected that since he was the person to whom the words of alleged intent were addressed in address B in Harryville, that he would have corroborated this. On the contrary, he had no recollection of even meeting the accused. The Crown had not sought to impugn him and he had not been left out as a witness in whom the Crown could place no trust.

LEGAL PRINCIPLES

[169] Before turning to my overall conclusions in this matter I shall deal with some of the salient legal principles governing my approach to this case:

[170] I recognise that the onus is on the prosecution throughout this case to prove the matter beyond all reasonable doubt. That does not mean that every peripheral fact or piece of evidence has to be established to that standard. What has to be proved is the body of material facts which make up the charge against the accused.

[171] I acknowledge that the expert evidence that has been called is to provide me with scientific information and opinion which is within the witness's expertise and likely to be outside my experience and knowledge. I have viewed it as part of the evidence as a whole to assist me with regard to the particular aspect on which it has been called. However in reaching my verdict I have looked at the evidence as a whole.

Attempted murder

[172] The intention which the prosecution must prove on a charge of attempted murder is an intention to kill (R v Whybrow 35 Cr. App. R. 141). That is the nature of the intent that is necessary in this case and which the prosecution must prove beyond reasonable doubt if the accused is to be convicted.

[173] I have not taken into account and have not drawn an adverse inference from the refusal of the accused to answer questions put to him by the police

when interviewed. No inference can be drawn from silence in general. A defendant, as in this case, who does not advance a positive case or call evidence does not rely on a fact for the purpose of Article 3 of the Criminal Evidence (Northern Ireland) Order 1988 as amended. (see R v Webber 1 Cr. App. R. 40 H and R v. Devine (unreported) May 1992 NICA). Accordingly I have reminded myself of this principle before coming to a conclusion in this case.

Adverse Inference

[174] At the conclusion of the evidence for the prosecution when Mr Mateer indicated that having had advice the accused did not wish to give evidence, I drew attention to Article 4(2) of the Criminal Evidence (NI) Order 1988 (as amended with effect from 10 April 1995 by paragraph 61(3)(b) of Schedule 10 to the Criminal Justice and Public Order Act 1994). This Order required the court to satisfy itself that the accused was aware that the stage has been reached at which evidence can be given for the defence and that he could, if he wished, give evidence and that, if he chose not to give evidence, or having been sworn, without good cause refuses to answer any question it would be permissible for the court to draw such inferences as appeared proper from his failure to give evidence. When Mr Mateer indicated at the end of the prosecution case that having consulted with his client, he was not intending to give evidence I then asked him if he had advised his client in these terms. Counsel having confirmed that the accused had been so advised, the case then proceeded.

[175] In assessing whether or not it is proper for me to draw inferences in this case from the failure of the accused to give evidence, I have been guided by the judgment of Lord Slynn in Murray v DPP (1994) 1 WLR 1 ("Murray's case") who stated:

"It is quite plain from article 4 of the Order that the court must not only call upon the accused to give evidence, but must tell him beforehand that it is going to do so and tell him what will be the effects of his failing to give evidence. That effect is spelled out in paragraph 4 of the article. The court may (a) draw such inferences from the refusal as appear proper and (b) on the basis of such inferences treat the refusal as, or as capable as amounting to, corroboration of any evidence given against the accused in relation to which the refusal is material. All that may be done as part of the process of 'determining whether the accused is guilty of the offence charged.'

The accused cannot be compelled to give evidence but he must risk the consequences if he does not do so. Those consequences are not simply, as the defendant contends, that specific inferences may be drawn from specific facts. They include in a proper case the drawing of an inference that the accused is guilty of the events with which he is charged.

This does not mean that the court can conclude simply because the accused does not give evidence that he is guilty. In the first place the prosecutor must establish a prima facie case—a case for him to answer. In the second place in determining whether the accused is guilty the judge or jury can draw only “such inferences from the refusal as appear proper.” As Lord Diplock said in *Haw Tua Tau v. Public Prosecutor* [1982] AC. 136, 153:

‘What inferences are proper to be drawn from an accused’s refusal to give evidence depend upon the circumstances of the particular case, and is a question to be decided by applying ordinary common sense.’

There must thus be some basis derived from the circumstances which justify the inference.

If there is no prima facie case shown by the prosecution there is no case to answer. Equally, if parts of the prosecution case had so little evidential value that they called for no answer, a failure to deal with those specific matters cannot justify an inference of guilt.

On the other hand, if aspects of the evidence taken alone or in combination with other facts clearly call for an explanation which the accused ought to be in a position to give, if an explanation exists, then a failure to give any explanation may as a matter of common sense allow the drawing of an inference that there is no explanation and that the accused is guilty.

In the present case, if the only evidence relied on was that relating to fibers in the hair, on the clothing and in the car, it might well not be enough to justify an inference that the defendant was guilty beyond a

reasonable doubt. The cartridge residue on the jeans, the thumb print on the mirror and the mud on the trousers, the evidence that he was not at home during the night, clearly, taken in combination, call for an explanation if there was one. The judge was, moreover, entitled to have regard to the cumulative effect of all the circumstantial evidence in deciding whether a failure to give evidence justified an inference of guilt.”

[176] In R v. McLarnon (1992) NI 168 Hutton LCJ said at p 175E:

“Mr Cahill now appears to contend that this passage indicates that Art 4 should only be invoked when the Crown case is weighted on the brink of proof beyond a reasonable doubt. I hasten to say that my words were never intended to limit the application of Art 4 in such a way. That Article is in the widest terms. It imposes no limitation as to when it may be invoked or what result may follow if it is invoked. Once the court has complied with preliminaries in Art 4 (ii), and called upon the accused to give evidence and refusal is made, the court has then a complete discretion as to whether inferences should be drawn or not. In these circumstances, it is a matter for the court in any criminal case –

- (1) to decide whether to draw inferences or not, and
- (2) if it decides to draw inferences what their nature, extent and degree of adversity, if any, may be.

It would be improper and indeed quite unwise for any court to set out the bounds of either steps (1) or (2). Their application will depend on factors peculiar to the individual case. “

Circumstantial Evidence

[177] It was common case in this instance that the prosecution case rested on substantial elements of circumstantial evidence. In considering the circumstantial evidence in this case, I have been guided by the principles set out by Carswell LCJ (as he then was) in R v McClean and Noel William Joseph McCready (unreported 28 June 2001 (CARE3425)) where he said at page 7 et seq:

“The judge adopted a statement of the law concerning the evaluation of circumstantial evidence which I expressed at pages 34 and 35 of my judgment in *R v Caraher and others* (1999, unreported), and which we consider suitably conveys the proper approach:

‘Circumstantial evidence has to be evaluated with the correct amount of circumspection. Where it points in one direction only, it can be a highly convincing method of proof, but it is necessary to beware of the possibility that it may be laying a false trail. It is incumbent upon the Crown to establish that the evidence points beyond doubt to one conclusion only, and in the process to rule out all reasonably tenable possibilities which may be consistent with the evidence. The individual pieces of evidence making up a case based on circumstantial evidence may each be of greater or lesser weight, but what matters is the conclusion to which the combination of circumstances leads. This was graphically illustrated by 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 this 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 reasonable suspicion; but the three taken together may create a conclusion of guilt with as much certainty as human affairs can require or admit of.”

I would also refer to two quotations from Commonwealth decisions, approved and adopted by the Court of Appeal in *R v Meehan* [1991] 6 NIJB 1 at 32-34. The first is from *Thomas v The Queen* [1972] NZLR 34 at 36, where the trial judge Henry J stated in charging the jury:

“... the law says that a jury may draw rational inferences from facts which it finds to have been proved, and a jury may ultimately find a verdict of guilty by this process of reasoning ... Now whilst each piece of evidence must be carefully examined, because that is the accused's right and that is your duty, the case is not decided by a series of separate and exclusive judgments on each item or by asking what does that by itself prove, or does it prove guilt? That is not the process at all. It is the cumulative effect. It is a consideration of the totality of the circumstances that is important.”

The second is from *Cote v The King* [1942] 1 DLR 336, where the Supreme Court of Canada said:

“It may be, and such is very often the case, that the facts proven by the Crown, examined separately have not a very strong probative value, but all the facts put in evidence have to be considered each one in relation to the whole, and it is all of them taken together, that may constitute a proper basis for conviction”.”

Identification

[178] In so far as identification of the accused was an issue in this case, I have reminded myself of the principles set out in R v. Turnbull [1977] QB 224. In particular I have reminded myself of the specific weaknesses in the identification evidence particularly of Ms McAuley which had been drawn to my attention by Mr Mateer and to which I shall make reference later in this judgment when dealing with her evidence. The principle of Turnbull might also have applied to the statement of Mr Agnew who purported to identify the accused. I was therefore very conscious of the points concerning the identification which Mr Mateer sought to rely on (see R v. Stanton published in The Times April 28 2004). In Maguire (1977) 4 NIJB Lowry LCJ adopted the Turnbull guidelines of the English Court of Appeal. Accordingly in cases of disputed visual identification a judge should warn himself to look for supportive evidence and also the dangers of mistaken identification. If identification evidence is too weak the judge should dismiss it from his consideration. I am also conscious that identification by one witness can support the identification by another but I must remind myself that any number of honest witnesses can be mistaken (R v. Russell (1982) 6 NIJB). An identifying witness can be regarded as both honest and reliable even though details of his description of the offender or the scene differ from details stated by other reliable witnesses although a failure to observe a very significant feature may weaken identification evidence significantly by showing unreliability (Duffy (1997) 7 BNIL 40). I have also noted that in R v. Holmes (2001) 7 BNIL 37 Coghlin J said that if identification evidence were mistaken, the defendant would be able to say where he was at the material time. Hence the court in that case drew an inference adverse to the accused from his failure to testify. For the purposes of clarity, I make it clear that I accept that a

dock identification is notoriously unreliable and its probative value arises only where the witness fails to identify the defendant in the dock (see Burns (1988) 7 JB at 57). I permitted Ms Macaulay to point out the accused in the dock only because I was satisfied on the evidence at that stage before me that she had known him for two years having seen him on her evidence every Saturday night for that period and that therefore this was simply a case of recognition rather than a dock identification. On the other hand, Mr Agnew knew the accused for 14 years and therefore the absence of any identification in court was of no relevance.

MY CONCLUSION

[179] Applying these principles of law to the facts of this case, I have come to the conclusion that this accused is guilty of the attempted murder as charged. I have come to that determination for the following reasons:

[180] There is overwhelming evidence that the accused was present at the scene of and participated in the attack on Mr Reid. Mr Reid gave clear evidence that a leading assailant was a man who introduced himself as Aaron White ("the man"). The man had presented himself at the house where Reid was intending to stay overnight. He spoke with a local Ballymena accent and was wearing spectacles which were round in shape and tinted. I accept entirely the evidence of Mr Reid that he saw this man shortly before the attack nodding at another man (whom he described as his brother) who then walked to the kitchen. It is perfectly understandable that Mr Reid may not have descended to this level of detail in the aftermath of the attack on him a few hours later when he was spoken to in hospital by Detective Constable Orr. Mr Reid was in a hospital bed at the time, in early stages of recovery from a brutal attack and I would not have expected him to have gone into great detail at that stage. In any event Detective Constable Orr made it clear that the notes he was taking were being drawn up to give guidance to the police at that stage rather than a full detailed witness statement. I find no significance therefore in the omission of this reference at that stage. I am satisfied that the accused did nod to the other man and I infer from this, and his subsequent behaviour, that the accused was playing a significant role orchestrating the unfolding events. Shortly thereafter the attack began on Mr Reid with a cable pulled round his neck, he was struck over the head with an implement which I believe to be a saucepan found in the house. A man he described as Neill White went into the kitchen and returned with a small knife and stabbed Mr Reid. In the event he received approximately 16 lacerations from the knife.

[181] Subsequently after he had feigned death, lying on the ground, he saw the man telling his brother, Neill White to make sure he was dead, to guard the body and the third man was then told to get a saw to cut Reid up. I do not regard it as significant that Mr Reid had not mentioned also this detail in his statement to the police. Mr Reid struck me as a rather unsophisticated

individual who might not have set out the means of identifying that the man had spoken these words unless he had been expressly asked in the course of questioning. I found it entirely plausible that he should answer in evidence that he had not been asked this prior to being in court.

[182] As he lay there, no doubt chilled by what he heard being said about the plan to cut him up, I have no difficulty accepting that he would be watching the mouth and face of the man saying these words. I am satisfied that the man who said these words was the man who had styled himself as Aaron White.

[183] Of course Mr Reid did not identify the man calling himself Aaron White as the man in the dock. Reid did not know him before the attack, no evidence of an identification parade was given before me and no dock identification would have been permitted by me even had it been sought. However there was other evidence to confirm that the man in question was the accused in the dock.

[184] I am completely satisfied that there was no substance in Mr Mateer's assertion that Mr Reid's recollections were impaired by alcohol. His evidence was clear and convincing, he had not consumed on his evidence such quantities of alcohol that evening or the previous evening as would have materially impaired his understanding or appreciation of what was unfolding. On his own words he may not have been entirely sober but he was not drunk. I accept this.

[185] When describing the attack, Mr Reid used the phrase "I was in a state of shock. I did not know what was going on". He explained this phrase in cross-examination on the basis that he did not know why these men were doing this. I accept that as a perfectly reasonable explanation of this phrase. I am satisfied that this attack was fuelled solely by sectarian hatred by people who were strangers to him. Mr Reid had never met these men before and even in the context of Northern Ireland, I can easily understand someone not readily grasping that religion was the only reason for strangers so brutally attacking him.

[186] Mr Mateer challenged the reliability of any purported connection between this man and the accused because others described the accused wearing a zipped up dark jacket whereas Mr Reid described him wearing a yellow top with writing on it. No evidence was given as to what the man who was identified by others as Aaron White had under his zipped jacket. I find nothing contradictory in the description of clothing by these persons, which I shall deal with later, or which casts any doubt on my certainty that one of the men who attacked Mr Reid was the accused. He could quite easily have taken off his zipped jacket underneath which there was a yellow top.

[187] If the man, wearing tinted glasses with a local Ballymena accent, present with his bother Neill White, who it is known was involved because he had already pleaded guilty, and who called himself Aaron White, was not the accused, it would be an amazing coincidence that a pair of tinted prescription spectacles which clearly belonged to the accused in light of the evidence of the optometrist Ms Penny were found outside address A in Harryville in the immediate aftermath of this attack. Having heard the careful evidence of Ms Penny I have not the slightest doubt that these spectacles were those of the accused given the specificity of her evidence about the frame number, the frame size, the name of the frame and the tint all matching exactly spectacles which she had prescribed to the accused.

[188] Not only were those spectacles found immediately outside the scene of the attack, but a spot of Mr Reid's blood was found thereon. Mr Mateer argued that these glasses might have been a spare pair left in the house of his friend (he had purchased other glasses from Ms Penny) for some time. How then did they come to be lying outside address A in Harryville and have Mr Reid's blood on them on the very night of this attack? Mr Mateer's submission was that there was no onus on his client to provide any reason for this. However the unexplained presence of those glasses so close to the scene of this attack, in the circumstances where a man had identified himself as being Aaron White, wearing tinted glasses, and had been identified by others as being close to the scene wearing tinted glasses in my view are part of the circumstances which taken as a whole create a strong conclusion of guilt in the attack that took place.

[189] I am satisfied that the mobile phone found inside address A in Harryville by the Scenes of Crime Officer McConnell belonged to the accused. The four references drawn to my attention point irresistibly to that conclusion. The timings and dates were stamped on the network. On 3 October 2003 a message was sent to man called Aaron. On the very birthday of the accused, there is clearly what amounts to a birthday greeting sent to someone called Aaron on the telephone. The two deleted messages dated 10 October 2003 and 6 October 2003, from an Aidy Mitch point also to the recipient being called Aaron - the Aidy Mitch in the context being Aidy Mitchell.

[190] Although the most recent message was 8 October 2003 i.e. three days before the incident in question, that did not deflect me from concluding that there was compelling evidence that this was the phone of the accused on the attack. Mr Mateer argued that the telephone could have been left at the scene of the attack for some time prior to the attack itself having been lost or mislaid. By itself this evidence on its own would not have been determinative. However the presence of this mobile telephone taken together with all the other evidence to which I have adverted is but one more circumstance which when added together creates a strong conclusion that the accused was the man whom Reid identified as the man called Aaron White. No explanation was

given to me as how the mobile phone got there in address A in Harryville in the very room where Reid claims he was attacked. Its presence therefore adds yet one more strand of cord in this case to the strength of the overall case.

[191] I admitted in evidence a statement of Robert James Agnew. I have already handed down a judgment in this regard (R v White, unreported GILC5861) (“the statement judgment”). I have reminded myself of what Lord Griffith said in Scott v R (1989) AC 1242 at 1258 which I have set out at paragraph 32 of the statement judgment. I am therefore conscious of the fact that his evidence was not tested in cross examination and that I should take that into account when considering if I can safely rely on his statement. I must also bear in mind that the oral evidence of Adrian Mitchell also contradicts the evidence of Mr Agnew that the accused had told Adrian Mitchell that he was going to kill a taig or something very similar, definitely using the words, “kill” and “taig”. I must also recognise that Mr Agnew acknowledges that he had drunk two or three pints plus six of seven vodkas in the earlier part of the evening. His statement records:

“I would have considered myself rightly on but I knew what was going on”.

[192] I must also carefully scrutinise the quality of his evidence as produced in the statement.

[193] The fact of the matter is that Mr Agnew purported to have known the accused for 14 years and that is unchallenged by any evidence in the case or by the accused. To that extent the principles of Turnbull do not deflect me from my belief that he easily identified the accused. I have no extraneous evidence either through cross examination or independently in the case to cause me reason to doubt the veracity of Mr Agnew in this regard. I have been given no cause whatsoever to believe that this assertion is untrue beyond the evidence of Adrian Mitchell which I shall deal with shortly and which I do not accept. That being so, even with a substantial quantity of drink consumed, I have no doubt that Agnew could easily identify Aaron White being close to him. The detail in his statement suggests a clear recollection of events. He records of Aaron White the accused:

“He was wearing a pair of glasses, they were oval in shape and I think they might have had a tint in them”.

[194] I was satisfied that despite the frailties that I have outlined the quality of his evidence is such that I can rely on it in some measure to be satisfied that the accused was present in address B in Harryville and was wearing glasses which bear a marked resemblance to those worn by the man described by Mr Reid and which were found outside address A in Harryville.

[195] Mr Agnew's statement also records:

"I was in a couple of minutes when Aaron White bounced in the door ranting and raving, he stood at the door with both feet in the living room, he had his arm up and was waving them in the air: he shouted:

"I'm going to kill a taig; I'm going to kill a taig"

or something were similar but definitely, "kill" and "taig" was used."

[196] Those words of course tie in with the sentiments which Mr Reid said were expressed to him namely:

"We are going to kill you you fenian bastard you are going to die."

and also with the evidence of Ms McAuley with which I shall deal separately. Once again there is no extraneous evidence called by the accused other than the evidence of Mitchell to doubt this assertion by Agnew or any independent evidence given to suggest that there is some reason why Agnew, and for that matter Ms McAuley would manufacture such words. By themselves the words do not prove the accused attacked Mr Reid but they are again part of the combination of circumstances which taken as a whole create a strong conclusion of guilt.

[197] In so concluding, I was unswayed by the oral evidence of Adrian Mitchell. I found his demeanour and manner singularly unimpressive and unpersuasive. He was vague and uncertain about most parts of his evidence, indicating that he had been drunk on the night in question. Since he was tendered by the prosecution, he was not subject to cross examination.

[198] I note at this stage that the prosecution ought normally to call or offer to call all the witnesses who give direct evidence of the primary facts of the case, unless for good reason, in any instance, they regard the witnesses' evidence as unworthy of belief. The defence cannot always be expected to call for themselves witnesses of the primary facts whom the prosecution have discarded. It is for the prosecution to decide which witnesses give direct evidence of the primary facts of the case. The prosecutor is also the primary judge of whether or not a witness to the material facts is incredible or unworthy of belief. (R v. Russell - Jones [1995] 1 CR. App.R.538) (the "Russell-Jones case"). The prosecution cannot properly condemn a witness as incredible merely because he gives an account at variance with that of a large number of witnesses and one that is less favourable to the prosecution than that of the

others. A prosecutor properly exercising his discretion will not therefore be obliged to proffer a witness merely in order to give the defence material with which to attack the credit of other witnesses on whom the prosecution rely. To hold otherwise would be to assert that the prosecution are obliged to call a witness for no purpose other than to assist the defence in its endeavour to destroy the Crown's own case. The court in the Russell-Jones case added that these principles should not be regarded as a lexicon or rule book to cover all cases. Nonetheless the fact of the matter is that the prosecution did call this witness but that does not mean that the court should not readily assess this witness precisely as any other witness would be scrutinised notwithstanding that he contradicts other Crown witnesses.

[199] I watched him carefully throughout the course of his evidence. In particular when he stated that he had not seen the accused at all that night, and by implication, although he was not asked, the words described by Agnew and Ms Macaulay had not been spoken to him, he was a study in reluctance and discomfiture. I did not find him a credible witness in any regard. Whether it was because he was so drunk he had a complete memory blank of the relevant events or whether it was some other reason concealed from me, I did not believe he was telling me the truth. His evidence did not in my view undermine the assertion in Mr Agnew's statement or, for that matter, the assertions by Ms McAuley as to what the accused had said in address B in Harryville.

[200] The evidence of Emma Thompson was that she too had been at the party at Aidy Mitchell's house on 10 October 2003. She freely admits that she had taken quite a bit to drink although she was adamant that she was not drunk. Whilst not identifying the accused, she recalled speaking to a man in Mitchell's house who stood in front of her and her friends and kept on about them being very young, "Like a kindergarten". He was dressed in a dark coat and tinted glasses. Significantly she had said to him in a smart way, "Was the sun shining". Once again by itself this would not have raised a reasonable conviction but it does lend weight to the description of the man Mr Agnew and Ms McAuley described as the accused in terms of the mode of dress and the tinted glasses. She did not attempt to embellish her evidence in any way and I found this young woman a frank and candid witness. She freely admitted feeling sick, sleepy, fed up and tipsy but the evidence of her recollection was clear and unbending in the course of a searching cross examination. I do not believe that she was so drunk as to make her evidence unreliable or worthless given that it fits the pattern of other witnesses in the case. Of course it is possible that more than one man at the party was wearing tinted glasses and a dark jacket but the use of the phrase, "Like a kindergarten" has a resonance with what Ms McAuley alleges was said to her by the accused outside in street X in Harryville shortly before. The presence of her evidence therefore adds yet another strand of cord to the circumstantial rope.

[201] The cumulative effect of the evidence which I have outlined in these paragraphs which I have set out up to now was sufficient to convince me beyond reasonable doubt that the accused was the man who had taken part in the attack on Michael Reid and who had identified himself as Aaron White to the victim.

[202] There was however further compelling evidence which served to underline the conviction that I have already arrived at.

[203] Applying the tests set out in Murray's case, I am satisfied that I may have regard to the cumulative effect of all the circumstantial evidence in deciding whether a failure to give evidence justifies an inference of guilt. In my opinion the evidence adduced by the prosecution establishes a clear prima facie case and that I am therefore entitled in all the circumstances of this case, and as a matter of common sense, to infer that there was no innocent explanation to the prima facie case and that the defendant was guilty. I believe that that is a proper inference for me to draw on the basis of the material before me. I make it clear that I am not proceeding on the basis that simply because the defendant did not give evidence he was therefore guilty. Having regard to the circumstantial evidence as a whole I have concluded that a refusal to deal with it, or those material parts of it, justifies an inference of guilt. For the removal of doubt I make clear that the aspects of evidence taken alone or in combination which I consider call for an explanation which the accused ought to be in a position to give, if any explanation exists, include the presence of his spectacles with the blood of Reid thereon lying outside the house where the attack took place, the presence of his mobile phone inside the room where the attack took place, his alleged presence at Aidy Mitchell's house and the words it is alleged that he used suggesting his intention to kill a Catholic and the evidence of Mr Reid set in that context, of a man calling himself Aaron White with tinted glasses attacking him. These all cry out for an explanation if innocent one there is.

[204] In coming to this conclusion about the adverse inference, I reject Mr Mateer's submissions that there is insufficient oral evidence to attach any weight to it and that the finding of the spectacles and phone are equally deficient since there is a ready explanation in that these items could have been left there some time before this incident. I make it clear that the cumulative effect of these matters as a whole justify an inference of guilt without explanation.

[205] I turn now to the evidence of Ms Macaulay. Mr Mateer properly explored a number of frailties in her evidence. He submits that she was confused and unreliable. Instances of this have been highlighted in the case. Initially she recalled only three men in the street, purporting to identify only Aaron White and his brother and not knowing the third man. Subsequently in her cross examination she identified a third man as Mojo and claimed that

there was a fourth man she did not know. She moved from saying that she had not met four people, to a stage where she said she could not remember if there was a fourth or not, to a stage where she accepted that there were four people. She could not account for the fact that she said she did not know the third man although she now readily admitted to knowing Mojo Mitchell. She also claimed that the fourth man had walked into the house at address A in Harryville and that subsequently it was this man that she saw in address A in Harryville arguing with Aaron White. This clearly was incorrect because the fourth man was certainly not Michael Reid if his account is to be believed. In addition there was nothing in Mr Reid's evidence about an argument between Aaron White and himself when they were alone together. She also told me that she had not discussed the events of this night at any time before she made her statement to the police. Yet subsequently she admitted that she had been told the name of Michael Reid and the accused's brother. Although she could not remember the circumstances of being told, she was adamant she had not discussed the events of the night. That seemed an implausible state of affairs. She also originally emphasised that she had seen Aaron White every weekend in the two years up to 2003. However when cross examined and it was put to her that it was possible she had not seen him in the bar after 2000, she agreed that that was possible. When I questioned her about it, she said she had seen him in the Raglan Bar before she was 13 and a couple of times after she was 13 in the Raglan Bar. She accepted that she was tipsy although originally she had insisted she was not drunk.

[206] My impression of this very young woman was that she became confused during the course of her evidence. I have no doubt that she found giving evidence in such a trial an enormous strain and she was clearly nervous when giving her evidence. It may have caused her to forget certain matters e.g. that she had discussed the case with others after the events of the night to some extent although perhaps not in any detail. Nonetheless I was convinced as I watched her evidence unfolding that this was a young woman who was trying to recollect as best she could but that the strain of the experience in the witness box was telling on her as time went on and as she faced a searching but fair cross examination from Mr Mateer. She gave a completely different impression from that of Mitchell. I do not believe that this young woman was telling lies and on the contrary I believe that she was trying to tell the truth but became confused as to the details of that evening and thereafter. I considered therefore that this was a witness who required me to exercise special caution when considering her evidence and that I should be slow to rely upon it unless there was supporting evidence. I was satisfied that she was telling the truth when she said she had known this man over a period of two years and had seen him regularly on a weekly basis during that time. Whilst she became confused as to when exactly that two year period had been, I was satisfied that she knew him well and that her use of the phrase, "I knew of him" simply meant that she did not know him as a friend or someone to whom she regularly spoke given the age difference. I believed her evidence that she saw him in the street in street X

in Harryville on the evening in question. I do not believe for one moment that she made up the recollection that he in fact had spoken to her, asked her her age and said "Is this the kindergarten day out". I also believe the description she gave of him wearing a dark coat, jeans and dark glasses. His presence in the street at that time and his subsequent presence which she described in Aidy Mitchell's house is supported to a material extent by the evidence of Mr Agnew and to the extent I have already mentioned by Miss Thompson. It is not without significance that Miss Thompson also referred to a man using the phrase "kindergarten" i.e. she said a man wearing dark glasses and a dark jacket mentioned the question of their age and that it was like a "kindergarten". I consider that this is some indication that it was the same man of which they were speaking and that that man was Aaron White. The presence of the accused's glasses in street X in Harryville is further supporting evidence of his presence there.

[207] I also find support for her account that White came into Aidy Mitchell's house and that he was agitated and was "bouncing about" the room. She said he was talking to Aidy Mitchell and said, "Do you want to kill a Taig". This description of his demeanour and behaviour, and the words she alleged he spoke, is supported by the evidence of Mr Agnew. On its own I would not have been prepared to act on her evidence, but in so far as there is supporting evidence for it from other sources which I have mentioned, I consider that it can be taken into account in the respects which I have adumbrated. It constitutes one more piece of cord in the rope of circumstantial evidence which points to the guilt of the accused in terms of him being in the area on that night, and indicating what his intentions were. For the removal of doubt however I make it clear that even had I totally discounted her evidence, I would have reached the same overall conclusions on the basis of the other evidence available.

[208] I am therefore satisfied that the accused Aaron White was present in street X in Harryville on the night in question, in Aidy Mitchell's house at address B in Harryville, in address A in Harryville and took part in the attack upon Mr Reid.

[209] For the removal of doubt I make it clear that I have not taken into account the evidence of D/C Neill that the accused has not become available for 2 years. Such a state of affairs is sufficiently ambiguous to persuade me that I should ignore it in assessing the accused's guilt.

Intent

[210] I then turn to the question of whether or not the accused had the necessary intent to be guilty of attempted murder. I have come to the conclusion that he did have the necessary intent for the following reasons.

[211] The nature of the attack itself - attempted strangulation, sixteen lacerations with a knife, beating with a saucepan and subsequent kicks round the legs and blows on his head constituted a merciless, vicious sustained and violent attack which points to an intent to kill this man. A knife had been sought and obtained and was used to lacerate him. Those lacerations were around the head as well as other parts of his body. The use of the knife on so many occasions itself is indicative of intent to kill. The evidence of Mr Logan and the amount of blood he found all over the furniture and walls of the living room bears further testimony to the ferocity of the attack on Mr Reid. This attack was only halted because the assailants believed they had killed him when he feigned death.

[212] These men were saying according to Reid:

“We are going to kill you, you fenian bastard and you are going to die”.

I believe that Mr Reid was telling the truth when he asserted this. In my view this together with the nature of the attack is a clear indication of intent to kill the victim. The decision to saw up what they believed was his dead body without any attempt to help or resuscitate him is another small piece of evidence pointing to their intent.

[213] The accused clearly played a leading role in this attack. I am satisfied that he had nodded to his brother to commence the attack. Thereafter when he orchestrated the decision to cut up the body of the victim when they thought he was dead this was yet another indication of the leading role he played in this attack. Far from making an attempt to revive him or get any help for him when they thought they had killed him, the decision was coldly and chillingly taken to cut up his body with a saw.

[214] The violence of the attack was such that it does not surprise me at all that the accused brother pleaded guilty to attempted murder. What other intent could there have been given the ferocity of the attack, the nature of the implements used to attack him and the words spoken? I recognise that his plea of guilty does not mean that his fellow assailants had the same intent but I am satisfied the accused was a willing and leading participant in the attack on Reid.

[215] The intent was also borne out by what I believe the accused said to Aidy Mitchell as outlined by Mr Agnew. That in itself would have been enough to indicate his subsequent intentions. In addition there is the evidence of Ms McAuley to the same effect which lends support to the conclusion I have already made about the intent. I make it clear that even if I had discounted her evidence entirely, the other evidence would have satisfied me of the necessary intent.

[216] Mr Mateer contrasts these matters with the assailants saying, "Oh shit we have killed him. Is he dead?". These are ambiguous statements and in my view do not deflect whatsoever from the gravamen of the intent which had been expressed earlier by the accused. These statements may well reflect the fact that he had "died" sooner than they had intended or even that the realisation that they had "killed" him so soon suddenly dawned on them even though that had been their intent. The method of attack on this man suggests a painful and drawn out death was meant to be his fate. I do not find these words in the context of this case overall, to constitute facts inconsistent with intent to kill.

[217] Mr Mateer made the point that the lacerations were not deep and might have healed even without treatment according to the medical evidence. The amount of blood recorded in the household by the scenes of crime officers, the blood all over the shirt of the accused and his torso in his state it was when he was seen by the police all indicates the ferocity of the attack upon him. Not only was he attacked with a saucepan, kicked and knifed on at least sixteen occasions, but he was also gripped about the neck with a ligature to the extent that the photographs clearly reveal a mark around his neck. I was in no doubt whatsoever that these injuries to this man alone, apart altogether from the unequivocal statements of intention to kill, amounted to evidence of the necessary intent for this crime to be proven.

[218] I have therefore come to the conclusion that the combination of circumstances in this case, taken together create a strong conclusion of guilt and point in one direction only with as much certainty as human affairs can require or admit. I find no circumstances which tend to establish innocence or, more especially, are inconsistent with guilt. The facts in this case are in my view inconsistent with any other rational conclusion other than the accused intended to murder Michael Reid. I am satisfied that at all material times this accused had the intent to murder Michael Reid. I therefore find him guilty as charged.