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Mr McCarey

Mr Kitson

Director

Re: Allegations against Police, Hamill

1. Counsel is asked to consider the above matter in the light of all current material. In order to do so I am able to draw on the following sources:
 - (a) The file ref. murder of Hamill
 - (b) The file ref. investigation against the police
 - (c) The transcript of the trial of Hobson which I conducted
 - (d) The confirmation by police that no further investigation is deemed necessary.

As discussed with Mr Kitson I feel it appropriate to update my comments in my original opinion with the caveat that having called two of the reported constables to give factual evidence as to murder of Mr Hamill it would not be appropriate for me to prosecute them should my advices have changed.

2. As this is an updated opinion I do not intend to repeat a full summary of the facts of the case which are set out in my initial opinion between paras 3,4,5, and 7. I will however refer to specific portions of the file in stating my final view.
3. There has been no change to the evidential position in relation to the allegations directed solely against Atkinson and therefore my comments at paras 9 and 10 of the opinion do not require further consideration.
4. The main allegation in this case has always been that the officers on duty in the landrover in Portadown centre at the time of this incident failed to do their duty of protecting the Catholic civilians who included both Mr Hamill and D

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from the attack which undoubtedly took place and was by some of the Protestant crowd who had congregated in the Thomas St Main Street area. Were this to be established the officers or any proved to have neglected their duty could and should be charged with at least the offence of wilful misconduct in public office as in the case of Dytham. It is to be noted that the authors of Blackstone 1998 A. 1.15 suggest that if the wilful misconduct contributed to the death of Mr Hamill then in principle a charge of manslaughter may be appropriate. This seems correct as the misconduct would be an unlawful act which was at law a cause of death. The standard to be applied remains that set out by the Court of Appeal in Dytham i.e. " Every public officer commits a misdemeanour (offence) who wilfully neglects to perform any duty which he is bound either by common law or by statute to perform provided that the discharge of such duty is not attended with greater danger than a man of ordinary firmness and activity may be expected to encounter. The neglect must be wilful and not merely inadvertent; and it must be culpable in the sense that it is without reasonable excuse or justification."

- 6. Dytham 69 Cr App Rep at p 387 is factually pertinent in that it is a similar allegation. The facts which are set out from the last line of p391 to 392 show quite clearly that Dytham was a case where the evidence showed that the officer observed a serious assault and took no action. As Lord Widgery stated " this involves an element of culpabilitywhich must be of such a degree that the misconduct impugned is calculated to injure the public interest so as to call for condemnation and punishment." It will be noted that the phraseology employed is very similar to that

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used in the standard direction in relation to as gross negligence manslaughter.

7. I am not concerned in this opinion about potential disciplinary offences only criminal ones. Given the law as stated above it is possible therefore to test the evidence to see whether it can be proved that the constables or any of them saw the assault taking place and failed to intervene or arguably were so negligent in failing to anticipate the attack that their conduct goes beyond mere nonfeasance but was of such a degree as to rightly require condemnation and punishment. The test to be applied by me is that appropriate to all cases I am asked to advise upon i.e. is there sufficient evidence to provide a reasonable prospect of a conviction.

8. In my original opinion I set out in para 5 the statements of those who purported to place the police intervention in sequence. Taking into account the evidence at the trial it appears that the state of the evidence is as follows.

E transcript p.32 gave evidence that when Mr Hamill and D were lying on the ground the police had not left the Land Rover. She said a police officer spoke to her but that was "after the attack and all was over". She said at p.35 that the whole attack was over very quickly. She denied there was any trouble after the attack or policemen involved with the crowd. The speed of the attack is confirmed in her statement p.8 complaint file where she says they were jumped on out of nowhere.

F at p.49 transcript couldn't say where the crowd came from and the attack happening so quickly. at 51 she said that from the start of the attack until it was over no officer got out. She denied seeing police officers trying to break up any fights during the attack. She alleged it was five or ten minutes or

more after the attack before she went to the landrover. When she went to the landrover she was banging on the side of it. p.53 At p.54 she denied seeing police officers involved with a crowd at any stage. At p.57 in answer to the judge couldn't say if there were any occupants in the landrover when she went over. in her statement she said p.9 file "it all happened so fast"

Mr Prunty p.59 transcript stated that " the next minute a whole squad appeared out of nowhere and jumped him (Mr Hamill)". p.61 there was no police around they came after Robert had been beaten up. They broke up the crowd and they took one fellow away AT THIS TIME THEY (the crowd) WERE STILL KICKING AT ROBERT at p.62 the judge asked to clarify the timing the witness then responded THEY BROKE UP THE CROWD WHEN THE KICKING HAD STOPPED. p.64 he said the crowd did not disperse after someone was taken by the police from the scene they were roaring and shouting again the judge intervened to check the timing of this and the witness then said the roaring and shouting was as the attack was happening. at p.72 he challenged the position of the landrover as described and placed the rear pointing over towards Thomas St. at p.77 he stated the attack lasted a good ten minutes and the police came out when the kicking stopped. p.78 he did not think it possible that police got out at any stage before the kicking stopped. p.80 he denied that there were fights after the incident or catcalling. p.85 he was not aware of any incidents other than the attack on the two men. In his statement on file at p.13 he describes the attack taking place and states that by this stage the

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police had got out of the land rover THEY RAN IN TO TRY AND STOP IT he goes on that he was grabbed and a policeman grabbed hold of one of the fellows that was kicking Robert Hamill he like everyone else in the group was kicking him. when the police got involved they seemed to back off a bit. After they were still shouting and bottles were thrown.

- 9. It is significant to decide on the accounts given by those at the scene in the trial whether the attack upon Mr Hamill was sudden and over quickly. On the one hand all seem to agree that the initial attack was entirely without warning and that it was sudden. Then however there is the suggestion by Prunty that it lasted perhaps ten minutes and the suggestion by F [redacted] that it was five or ten or more minutes before the police were involved. It appears that the officers had little warning of the attack occurring and if all over quickly even had they seen it had very little time in which to respond to it. If however the attack lasted even 5 minutes it would appear that the officers should have been aware of it. There is no really independent evidence of the events. In so far as the witnesses above have denied that there was no significant trouble after the attack they appear contradicted by the Ambulance technician who arrived at the scene following a call at 1:52 a.m. Mr Morrow at p. 173(D) transcript describes a hostile crowd taunting each other missiles being thrown and fighting. In addition to this one must also consider the reliability of the witnesses. Mr Prunty clearly is inconsistent not only in evidence when compared to his statement but is also inconsistent as between portions of direct evidence never mind cross-examination. F [redacted] was in a difficult position to reliably time events and her description and timing conflict in her

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evidence.

10. In the earlier opinion I referred to timing. Some efforts were made to time events at the trial. It appears that The deceased and his party left the hall around 1:30 a.m. This however is not exact. The journey to the scene is not a long one but would take some minutes especially if a number of persons were intoxicated. The first calls appear to have been for assistance at 1:45 and 1:47 and for an ambulance at 1:48, other police arrived at the scene from about 1:52 or so. Whilst the timings do not assist in determining the length of time the assault took it would appear to me the period of ten minutes suggested as an upper limit seems too long.
11. In para 6 of the opinion I dealt with the evidence of Dr McDowell, at trial the evidence given confirmed the position of the land rover at the time of the incident as being LR3 as shown on the trial maps. Atkinson was asked about the view in this position at p.124 -125 he stated he had a good view forward a view to the rear and a side view into Woodhouse Street. he was in the rear of the vehicle. Con Neill when asked said his attention was away from Thomas Street as the two men were speaking to R/Con Cornett until his door was opened.
12. In cross -examination of Constables Neill and Atkinson it was suggested that they had failed to get out though aware of the incident this was denied by them. [However a large part of the cross-examination was a challenge to the suggestion that at the time they did get out of the land rover there were no persons lying on the ground. This challenge was based upon a number of matters. In particular their difficulties in saying where the bodies were lying, their descriptions of the

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persons at or near the bodies, and their accounts as to who went to assist. Their evidence was clearly inconsistent in large areas. The particular difficulty that Con Neill had was explaining what had caused someone to pull him from the landrover and what they meant when they said words to the effect you let that happen. This can be seen in passages from transcript at pp203-4 299-302 and 348-9. The most serious attempt to explain this in a way other than the obvious suggestion that this must have referred to what happened to Mr Hamill was the last passage cited, where he said " I believe there was possibly some assault that happened prior to us knowing anything about it but it had split up in that short time. After we got out after the chap came over to the door and got us out of the land rover then a further fight ensued." This answer led to a question from the judge which suggested he found that explanation less than satisfactory' The point was made by me in submissions however that it was Neill who raised this point even though it docs not appear in his favour.

- 13. In his judgement the Learned Lord Justice at p1 pointed out that the resolution of that issue was not essential to the judgement. It was clearly in the defendant's interest to encourage the view that there was one attack which occurred before the police got out of the landrover so that the offence was completed prior to any alleged involvement by himself. Accordingly as pointed out by the judge the issue was not really tested. In so far as he did comment at p.14 " the situation was a confused one and the attack on Mr Hamill and D [redacted] was quickly executed both F [redacted] and E [redacted] say the attackers "came out of nowhere".". Again at p18 the judge said "It is clear from the description given by..... that

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the attack on D and Mr Hamill was a very sudden one and that Mr Hamill was brought to the ground and attacked within a very short timescale.

I am unable to resolve to resolve the question whether the police officers remained in the land rover during the attack. On the evidence of the hall patrons this would not be entirely surprising and would not necessarily reflect on the officer's commitment to duty since according to the evidence the scene was peaceful immediately before the attack

The only issue which might reflect on the officers and about which no evidence exists is whether they failed to anticipate the attack in the event that there was any preparation or assembly before it. Even if alerted at the earliest moment by the occurrence of the attack itself it is unlikely that they would have been able to dismount and intervene in time to save Mr Hamill."

This latter point does not necessarily deal with the matter in issue and indeed the judgement itself is no basis for my advices merely illustrative of the problems in the evidence.

- 14. Having reminded myself of the full papers and considered the evidence at trial I have concluded that it is not possible on the evidence to establish the sequence of events which occurred. No matter how this incident started it is clear that there was a very serious assault which appears to have been without warning following this there was a hostile crowd who had to be kept away from the I.P.s. During this time there may have been fights between groups and most certainly was at least hostility to deal with. Reinforcements were sent for and medical assistance was sought. It will never be known whether the police did see

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any preliminary incident but the evidence is not there to establish this. Nor is there sufficient clear evidence to show from the timings or the position of the land rover that it would be proper to infer that the officers must have known that an incident was occurring. That being the case this is not a situation akin to that in Dytham. It is a prerequisite of liability that the officers can be proven to be aware of the incident for them to "wilfully" neglect or fail to perform their public duty. Accordingly it remains my opinion that the evidence does not establish the reasonable prospect of a conviction on this basis.

15. In considering the law at the start of this report I left open the further possibility that the officers were grossly negligent in failing to take account of the situation that may face them and take preventative steps against an attack such as this. This I left open due to the comments cited above from [REDACTED]. I propose to comment on this issue in view of certain comments made by the trial judge but in doing so must state that there is no clear authority that the offence being considered goes this far and I know of no convictions on this basis.

16. The first criticism relates to the lack of interest shown by the officers in the warning given that the people from St Patrick's were coming up the street. This appeared in direct evidence Neill transcript p. 198. It can be seen that Con Neill said that when they were told this there "was no sign of anybody coming" in cross-examination pp314-316 and then 317-326 this was explored in some detail as was the second criticism that is the placing of the landrover (Neill being the driver). It was suggested to the officer at length that having received a warning the police actions or lack of action ignored the obvious risk of a sectarian

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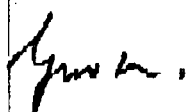
confrontation. Con Atkinson dealt with this in direct transcript p88, and in cross-examination pp104-118. Con Atkinson denied hearing the warning given however he confirmed the police knowledge of the potential for trouble and in some measure the fact that the landrover was not ideally positioned. Unlike the first basis considered for prosecution not all constables are shown on the papers to have been aware of the warning given, Neill certainly was he was also the driver and was in charge of the patrol as the senior constable. Accordingly it must be decided whether the combination of the warning, his positioning of the landrover and his failure to direct one of the observers in the vehicle to keep a close watch on the Thomas St junction knowing as he did that there was a build up of Protestants towards the bottom of the town was grossly negligent and so grossly negligent as to warrant prosecution in the "Widgery" sense. I have to say that even if the offence could be established on this basis I do not think the facts reach this standard. Both officers make the case that the public visible at the time they positioned the vehicle were at the bottom of the town "in dribs and drabs" and at that stage were not acting aggressively. The evidence of all parties supports the suggestion that at that stage nobody could be seen in Thomas St. In view of the warning it would have been prudent to pay more attention to Thomas St and may even have been negligent not to do so, but in my opinion this falls far short of the behaviour condemned by Lord Widgery. Accordingly I do not think criminal responsibility would arise on this basis.

- 17. The third criticism made by the judge is based on lack of information and his supposition that the allegations against Lunt were not pursued is of course quite

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wrong it being interesting to note that not only was Lunt charged with the murder but the evidence against him was appeared strong until weakened by the further statement prepared by Mr Prunty with whom I consulted at the time.

18. This was a very tragic case which occurred in circumstances in which it is inherently difficult for witnesses to be accurate and consistent. There may well be legitimate criticisms to be made about the police reactions on the evening and no doubt the deceased's family find it difficult to accept that the police did not see the whole incident. I however have to consider what can be established with certainty and in dealing with the case on that basis I do not feel the standard for prosecution has been reached.
19. This opinion is completed on 1 July and I shall be on holiday for four weeks but am available thereafter to discuss it should this be required.


Gordon W Kerr Q.C.

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