

Mr. McConee

Mr Kitson

Re: Investigation into Police Actions at the time of the death of Robert Hamill

1. Counsel has been asked to consider these papers and advise whether there is a reasonable prospect of a conviction of any police officer for an offence arising out of the evidence as to their conduct on the evening when the above was assaulted which assault caused his death. I advised in the criminal proceedings against those charged with the murder and it was not considered inappropriate for me to deal with both. The investigation commenced due to a complaint on behalf of the deceased's family, and centres on an allegation which has been the subject of a T.V. documentary which suggested that the officers present in a landrover at the scene sat back and did not come to the aid of Hamill or D his friend. There is also a second matter within the file and that is a suggestion that one officer present a Constable Atkinson, may have colluded with one of the attackers present after the incident. I propose to deal with the general allegation first.
2. The basis for any charge against the officers at the scene would be the common law offence of neglect of duty. As is stated in the file this offence was considered in detail in the English case of Dytham 69 Cr. App Rep p.387. That case factually was similar to this. A police constable witnessed one S being ejected by a bouncer from a club early one morning. A fight ensued in which S was uninvolved with 3 others and he was kicked to death. The appellant in no way intervened but went off. He was charged with misconduct of an officer of justice in that being present and a witness to a criminal offence namely, namely a violent assault upon S by three others, he deliberately failed to carry out his duty as a police officer by wilfully omitting to take

any steps to preserve the Queen's Peace or to protect S or to arrest or otherwise bring to justice his assailants. The Court of Appeal confirmed that such an offence existed and that no element of corruption or dishonesty was necessary to prove the offence. "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."

3. The facts of this case reveal that at the time of the assault a police landrover with a patrol consisting of Constable Neill, and P40, Atkinson, and CORNETT was present opposite the scene of the assault at Thomas Street Portadown on 27th April 1997. The particular complaint is that "certain police officers witnessed the assault and did not intervene as promptly as possible."
4. I will deal with more specific facts later but to place the complaint in context: The incident was a sectarian attack by protestants on a number of Catholics. There had been a function in St. Patricks Hall involving a large number of persons. A large number of persons had debussed coming from a disco in Banbridge. The two sides along with others in the town passing, had drink taken. The fight cannot be timed with any precision, indeed the sequence of events involving some minor incidents followed by a more serious confrontation cannot be easily be put in order let alone timed. At the height of the incident the rival crowds cannot be clearly

numbered but the estimates on the statements would suggest a crowd of not less than 40-50 and indeed up to 80. Once the fatal attack started it would have lasted at most only some minutes. The examination of radio logs shows that R/Con **CORNETT** radioed for extra police support at 1:45 and for ambulances at 1:48. When extra police responded they faced a serious situation with a large disorderly crowd, and, even with the reinforcements considerable difficulties were encountered.

5. The following witnesses appear to have made relevant statements reference the police in the landrover. These are not in time sequence rather just in the order in the papers.

Colin Prunty p.11

Just before fight broke out thought safe enough because saw a landrover in area. Fight started. Ploughed in to see what I could do to help him. I wasn't able to do anything there was just too many of them. By this stage the police had got out of the landrover and were over at the crowd..... They ran in to try and stop it..... When the police got involved they seemed to back off a bit.

P45

I saw a number of people around one person lying on the ground. These people appeared to be kicking at the person on the ground..... I could see a police land rover parked over on the other side of Market Street..... There were people near it as the police went towards them they backed off..... I also saw the police put a man into the back of the landrover but I couldn't say if that person.....

Stephen Thornbury p.35

I could hear a commotion..... when I first looked out I saw two boys lying on

the street..... I saw the police in the middle of the road..... There was only two policemen there one may have been a woman trying to keep the two groups apart.

Kyle Magee p.53

The next thing I seen was a crowd starting to fight on the middle of the street at the junction of Woodhouse Street and Thomas Street..... I got near the fight I got close to it..... The police landrover was parked outside the Alliance & Leicester...and I saw a couple of police officers get out of the landrover and walk towards the fight.

Michelle Jamieson p.56

I stopped at the roundabout thing in the middle of the town, at this time I could see people coming up from the bottom of the town, there was about 20 to 30 people about..... I saw a police landrover sitting.....I didn't notice any Police out on the street..... I walked on down I heard a woman screaming she was down on her knees over a man who was lying face downwards..... During this time I saw the Police standing near the landrover on the opposite side of the street to where I was.

Allister Hanvey. p.100 (not likely to be reliable).

I heard people shout orange bastards I could see that there were policemen in this crowd..... I would estimate that there were about 10 to 15 people plus police in the general area..... There were about 5/7 police at this time..... I could see 2 men lying on the ground I did see scuffles on the other half of

the main street..... From time to time people broke through the police line.

I was then approached by a policeman he asked me to help move some of the people back.....More police then arrived.

6. In order to ascertain how quickly police at the scene would have been aware of the incident, Dr [REDACTED] of the Forensic Science Agency was asked to comment on the position of the landrover vis a vis the incident. His conclusions are set out at p.176 of the papers. He found that " The front passenger would not have a view of the events taking place at Eastwood's clothing. Both rear seat passengers would have an extremely restricted view , unless deliberately looking at something they knew of, the driver would have a relatively unrestricted view through the side window should the driver choose to look through it."
7. The officers were interviewed about the complaint.

Con Neill

Made the case that they were aware of the potential for an incident and therefore changed the position of their landrover. During a conversation with Forbes and Bridgett a male approached and said " You sat there and watched it happen"

At that stage action commenced and when they got out there were 40-50 people in the area. He does not believe there was anyone on the ground injured when they got out. Once they were out fighting erupted and they took such steps as they could consistent with their own safety to stop it. It was only later he saw Hamill on the ground then [REDACTED]

[REDACTED]
P40

Recalls them talking to Bridgett after changing the vehicles position. A person

made them aware of the crowd from St Pat's. There was banter between two groups. Someone then pulled at Con Neill and they all got out. On getting out there was a large crowd in the area of Eastwood's There was like the start of a fight. He had to deal with a number of people and restrain them and only then became aware of anyone lying on the ground. He had done his best though with hindsight other things might have been done.

R/ Con Atkinson

The position of the landrover was changed to correspond to the persons at the scene. They spoke to Bridgett and he thought Robinson. Con Neill's door was opened and he was pulled out. He got out. He saw rival groups. He and Neill ran towards the groups he had his baton out. He took someone out of the crowd who rejoined it. He returned to the crowd and saw the two men on the road. They tried to keep the crowds separate and Wright was on the radio. The protestant group kept breaking through. Con Neill went to the injured he tried to keep guard. Further trouble developed and he assisted arresting Lunt. Others were still trying to attack the men on the ground and he tried to protect them.

R/Con CORNETT

Describes the changing positions of the vehicle to respond to the risk. 2 persons came over to the landrover to speak to them. During this a person started pulling Con Neill out of the Landrover. On getting out she saw a clutter of people her colleagues went to the area to try and stop the fighting. She went back to the Landrover to get assistance. When first out she saw nobody on

the ground but when returning from the Landrover there were two on the ground. She tasked an ambulance and saw her colleagues doing their best to control the fighting, but had limited success.

8. I have considered the facts on the papers in this case. The factual position in a nutshell appears to be the following. The tragic death of Mr Hamill occurred in a mob type attack involving undoubtedly more than one member of an aggressive crowd. It cannot be timed or accurately sequenced and never will be. There are a number of matters that appear to be common case.

(a) The incident involved a substantial aggressive crowd to be contained by 4 police officers.

(b) Nobody agrees on the sequence of events, but within a short space of time from the first fighting the matter became extremely serious.

(c) It is common case that at some stage police did in fact get out of the Landrover and did in fact intervene. They in fact took one person to the Landrover and were seen by witnesses intervening with others. Only the timing is in dispute

(d) Reinforcements were sent for and the police at the scene remained and continued their efforts until and after help arrived.

(e) An ambulance was tasked by them and during that period they remained active.

In the absence of some clear and cogent evidence on the papers that the officers involved saw the attack happening and deliberately stayed in the vehicle I cannot see either individually or collectively any basis for a suggestion that the behaviour of the officers was so negligent as to be a wilful breach of their clear duty to prevent or deal with offences. In reality the officers did in fact debuss, intervene, try to prevent

further attacks on the deceased, try to restrain and arrest those involved, reported the matter to their authority and sought both assistance and medical treatment for the victims. It may be said they could have been quicker and may have deployed their resources in a better way but I do not feel the evidence exists to show that this patrol were wilfully in dereliction or discharge either collectively or individually. This opinion is of course based on the evidence that I have read. I note the letter initiating the complaint from Ms [REDACTED]'s firm. In order to ensure that all relevant evidence has been considered the Department may consider it prudent to write to the complainant(s) through Ms [REDACTED] informing them that a decision on the complaint file is being considered and inviting any evidence they may have to be sent for consideration by the Department before this is finalised.

9. The final matter to be considered is the complaint against Atkinson alone. This arises from the statement of Witness "A". The statement was not available for use in the prosecution case as the witness intimated refusal to give evidence at consultation. It would seem clear to me that the refusal would extend to this file as well. In addition the complaint is based on her hearsay evidence of what she was told by Hanvey. Hanvey will not give evidence to this effect. The allegation was that Hanvey was rung by Atkinson the morning after and told to get rid of his clothing. It was expanded to the fact that Atkinson was keeping him informed about progress. This has now been further investigated.
10. It has been established that there was contact by telephone between the homes of Atkinson and the Hanvey's on the 27th April 1997 and 2 May 1997. In interviews

of various of those connected with the two families it appeared there was some contact on a social basis between the families. It appears however that the Hanvey family and in particular the father of the suspect were not on good terms with Constable Atkinson. The calls were explained by those involved. A Michael McKee accepted that he had been the person who made the call on the 27th. This was confirmed by the Hanvey's. McKee it must be said showed remarkable powers of memory in that he recalled this when asked in October. The call in May was acknowledged by Mrs Atkinson to be hers relating to martial arts uniforms. This again was confirmed by the Hanvey's.

Whatever the truth of the phonecalls the reality is that they in themselves don't prove anything but would merely go to prove any admissible direct evidence which established this allegation, there is no such evidence and therefore there can be no reasonable prospect of a conviction on this allegation.

11. My apologies for some delay in this matter. I am of course available to discuss my opinion at any suitable time if necessary. If further information is submitted on behalf of the complainant I shall be happy to consider it.

Jonathan