

THE QUEEN

v

PAUL RODNEY MARC HOBSON



The defendant is charged on two counts. The first is for the murder of Robert Hamill on 8 May 1997 and the second, added at the commencement of the trial by leave of the court, is for unlawfully fighting and causing an affray on 27 April 1997 in the County Court Division of Craigavon. The charges arise out of a violent incident which occurred in Portadown on 27 April 1997 which resulted in serious injuries being sustained by Robert Hamill. After lying unconscious in hospital for several days he died on 8 May 1997.

Eye-witnesses to differing aspects of the event were called by the prosecution and their evidence reflects two different views of precisely what occurred. On the one hand a group of people who had been patrons of St Patrick's Hall, Thomas Street, Portadown gave evidence of an unprovoked attack upon them at the junction of Thomas Street and Market Street as they returned towards their homes. The evidence of police witnesses suggests that some kind of confrontation took place before any serious injuries were sustained.

To resolve the issues which I have to decide in this case, it is immaterial which version is correct, but the incident has given rise to some public controversy and I feel that it is appropriate that I should analyse as best I can the evidence given and throw whatever

light is possible upon the occurrence of the events which led to the tragic death of Robert Hamill. It must be recognized however that the differing accounts have not been tested against each other since they have both been presented in the same interest during the trial.

It is well recognised that there is sharp inter-communal division in Portadown and the nature of the incident in this case was undoubtedly sectarian. It is difficult to label the protagonists in this kind of situation without giving offence to some, but for the sake of description I shall describe the group coming from St Patrick's Hall as the "hall patrons" and those whom they encountered as "loyalists", and persons including the hall patrons and others who were allegedly in confrontation with the loyalists as "nationalists". This is not meant to reflect any precise political affiliation on the part of either group.

The junction of Thomas Street and Market Street, Portadown has been described as a "flash point" at weekends, the reason being that it forms a crossroads where the two communities cross each other's paths when returning from their weekend evening entertainment. Nationalists attend St Patrick's Hall in Thomas Street and many of them, when walking home, make their way along Thomas Street across Market Street and into Woodhouse Street in order to gain access to the area where they live. Loyalists attend Portadown Rugby Club and the Coach Inn at Banbridge from which latter premises they return in buses which deposit them at the Bridge Street end of Portadown from which they make their way home along High Street and into Market Street.

The junction referred to is recognised by the police as being a potential trouble spot. On the evening in question, four police officers were on duty in a land rover patrolling within the central area of Portadown which was enclosed by security gates, and the

junction of Thomas Street/Market Street was one of the points of concern for them and indeed was a focal point of their patrol.

The police version of events at the time of the attack was given by Reserve Constable Atkinson and Constable Neill.

According to the former, the land rover stood parked in the lay-by outside the Alliance & Leicester Building Society facing towards High Street at about 1.30 am (this was position LR1 on map Exhibit No 4(2)). The only people on the street were those making their way "in dribs and drabs" from the High Street direction.

The land rover moved from its position, and when it reached a position close to the entrance to Woodhouse Street (LR2) a person crossed the front of the land rover from its right. In cross examination he amended this to say the vehicle was in position LR3 at that time. Constable Atkinson did not describe any initial exchange between this man and any of the officers, but saw two men come from the High Street direction who had an exchange of words with that person. Constable Cornett opened the front passenger door and told them to carry on.

He next recalled the driver's door being opened and Constable Neill seemed to be pulled out of the vehicle. He got out of the rear of the vehicle to assist and saw the constable and another man confront each other, but was unaware of what words were exchanged. It was then apparently that he noticed that young people were standing on the street cat-calling each other and exchanging sectarian remarks, about fifty loyalists and twelve nationalists in number. Seeing one particular exchange in which three or four loyalists were engaged with a nationalist, he and Constable Neill ran to extricate the nationalist from the crowd.

After bringing him to Woodhouse Street, he turned round and saw two persons lying on the ground; there was no-one with them. He observed that the groups were fighting and that bottles were being thrown and he ran over to the two people and helped keep the loyalist crowd back from them. An ambulance was sent for. He and Constable Neill removed a man from the crowd and took him to the rear of the land rover. At that stage his jacket was grabbed by the man who had crossed the land rover initially and who had had the altercation with Constable Neill, and there was a struggle between them. He had a glance across the road and saw three persons jumping on one of the prone figures. He ran over to that person and stayed with him for several minutes, so far as he could judge. A police car arrived to assist and he saw **A**, one of that team, removing a person to the back of the land rover. This person was wearing a red, white and blue scarf. An ambulance arrived and stayed for 15-20 minutes.

In cross examination he said that he did not hear what the man who crossed the front of the land rover said because of the noise of the engine and agreed that if he had heard that people would be coming from St Patrick's Hall that he would be more anxious to keep an eye on the two potentially rival crowds crossing.

He said that 3-4 minutes passed between the man being confronted by the other two and Constable Neill's door being opened; he could not recall if he looked towards Thomas Street during that time. The view in that direction would have been through the side slots of the land rover.

One of the two persons lying on the ground **D** was lying outside the bakery at number 7 and when the ambulance came it stopped short of where he was.

Constable Neill was driver of the police vehicle and described being parked in the lay-by at about 1.30 am. He said the town had been very quiet that night, but that

situation changed within a few minutes when people started coming up from High Street. He said there was a fairly steady flow of people, in groups of two or three, "walking up in dribs and drabs". He decided to drive down to a point near the barrier in High Street to have a look there, but just as he moved into position LR2 a man walked across the road in front of them and mouthed something at them. He had come across from the Thomas Street side heading towards Woodhouse Street. Reserve Constable Cornett opened her door and asked the man what he had said and he understood that he said that there were some people coming down from St Patrick's Hall to Thomas Street. The witness looked up Thomas Street, but there was no sign of anybody coming down so he went to move off. Two males approached from the High Street direction and approached the man that had spoken to the police officers "and they sort of squared up to each other" and he moved the land rover into LR3 position. Constable Cornett opened the door and told the men to move on.

The two men moved off towards the Alliance & Leicester premises on the corner of Woodhouse Street and the man walked down Woodhouse Street. The constable's explanation for taking up position LR3 was that he was past the point of turning into Woodhouse Street when the two men approached the other one and he took up position LR3 "so he could still see what was going on".

He said that the crowd making its way along Market Street was exhibiting "a bit of joviality and a bit of shouting and that, but nothing excessive".

The two individuals who had spoken to the man then engaged in conversation at the land rover for a minute or so discussing where they had been for the evening and then the driver's door of the vehicle was opened. The person who did so started to pull the witness down and was shouting at him to the effect "You sat there and did nothing. You

sat there, you watched that happening and you did nothing". Constable Neill did not know what he was talking about and could not see anything that could have explained the remarks.

The witness got out of the land rover and there was a female somewhere behind the man, she was also shouting to the same effect. At that stage the witness saw a crowd of approximately 40 people at the junction of Thomas Street and there was a lot of cat-calling going on between a group of loyalists and a group of nationalists, which was the smaller of the groups with about eight to ten in that group. When the three officers got out of the land rover a number of fights broke out across the street. He made his way towards a fight outside Eastwood's Clothing and took one person out of it that was fighting with the other three or four. He took him back over to Woodhouse Street. There he told the man to go home and as he was talking to him someone punched the man in the face from behind the officer. This was a male in his late teens, early twenties. The constable took that man back to the land rover where bottles were being thrown, one smashing on top of the land rover. There was still fighting going on across the street, with greater numbers involved.

He saw Reserve Constable Atkinson involved in one of the fights around the central reservation area and he went to assist him. He did not know whether it was at that stage that he saw a body lying on the road. It had not been there earlier, and the first time he saw it was after he had been in Woodhouse Street with the man he had brought across the street. He helped to extricate Reserve Constable Atkinson from the struggle that he was engaged in and then made his way over to the person lying outside Eastwood's, that was Robert Hamill. He said he was lying on the road on his back and there was liquid around his head which he at first thought was blood. His breathing was "like rasping". It sounded

as if he had possibly been stabbed. He was alone at that stage. He then realised that he had seen somebody coming down from the church, down Market Street towards Thomas Street. The two people seemed to be making their way towards each other, one had a bit of a bottle or a bottle in his hand, but he did not see the result of that.

His recollection was unclear, but he could remember being involved in a fight convenient to that area probably before he went to Mr Hamill. He seemed to amend this to say that he thought it was after he had made his way to Mr Hamill.

When asked about this he answered "I thought it was before because I remember seeing a person standing at the head/shoulders area of Mr Hamill". This person was standing over him and he appeared to be shouting or saying something to him as he was lying there. He saw this person swing his foot towards Mr Hamill in the area of his head and shoulders, he saw that clearly. The person was in his twenties, he had short hair and a goat beard, he had a round face and he would have been about 5' 8"/5' 10". The lighting in the area was good. He could not say whether the foot struck Mr Hamill or not.

At that time the witness was trying to split up another fight. He saw the other person, D, who was lying outside No 7, the home bakery. He was not aware of the ambulance arriving, but was there when it was present. Later he saw the same person that had been swinging a foot towards Mr Hamill. He was in a fight. The witness went to assist Reserve Constable Atkinson and the same person was involved in the fight. It was possibly close to the traffic light on the central reservation. It was only a matter of a few minutes between the two incidents. This person was in the middle of the fight. The witness was trying to pull him out, but he was not letting go and he struck him with his baton. He later identified the man he had seen at Lurgan RUC Station on Saturday 10 May, and identified him in court as being the accused.

A [redacted] had been on uniform mobile patrol with Constable Orr in a police car and received a transmission from Constable Cornett at 01.47 am. They arrived at the scene at approximately 1.55 am. Approaching the scene she observed a male youth carrying a Buckfast bottle. He ran towards the church. She observed a large crowd of 40-50 persons and two men lying on the road. The crowd was close to them. Police officers were present trying to push the crowd away from the men. She saw the crew of a land rover and Reserve Constable Silcott. The ambulance had not arrived at that point. The two men on the ground were at the junction of Thomas Street, but she could not say how close to each other. She saw again the male youth she had seen earlier, his name is Wayne Lunt. He turned and ran off and she grabbed him by the arm. He was kicking out at her and kicked her on her legs. At 1.57 am she placed him in the land rover. After he left the land rover she went over to assist the police in pushing back the crowd. Two males approached her, one she described as very irate and abusive. He asked her why she let the man leave the land rover "as he was one of the ones that did it". She did not record that and did not get his name and address.

D [redacted] said that he, E [redacted] F [redacted] and Robert Hamill left St Patrick's Hall shortly after the music had stopped. As they approached the junction of Thomas Street and Market Street he noticed a couple of people "knocking about" at the corner, but he did not pay any attention to them. All he could remember after that was wakening up in Craigavon Hospital when he had a cut to his head and a couple of marks to his face.

He, his wife and Robert Hamill had been drinking at the dance and he had "had a few pints".

E D . She said that the music at the function stopped at 1.00 am and they decided to leave early to relieve her baby-sitter. In her view they left ~~the hall~~ ^{the hall} about 1.20 am. As they approached the junction she saw a couple of people, whom she assumed had come from the hall, walking across into Woodhouse Street. She also saw a police jeep with its back doors facing the town clock. It was to the Bridge Street side of Woodhouse Street.

As she came out into the junction of Market Street she can only remember D lying unconscious and Robert across the road a wee bit lying down. She knew that he was hurt. He did not get up and was lying dead still. A crowd had come out from nowhere, numbering about 20-30. She never looked up to see them. She kept her head down and kept herself over D . Both men were outside Eastwood's with Robert more towards the centre of the road.

The first thing that she became aware of was the ambulance coming up towards them and then a police officer came over to her and told her to put D in the recovery position. F was with Robert. She said she was reassured approaching Market Street by the police presence. She did not see any police personnel out of the land rover. She said that when the ambulance came, a police officer was out of the jeep then, but that was after the attack was over.

F thought that they had left the hall at about 1.20 am or 1.25 am. Approaching Market Street junction there were two people at the bottom of Thomas Street and a police jeep. It was across the road to the right of Woodhouse Street. As they got out onto Market Street a crowd came from nowhere and just started attacking. They had just reached the junction of Thomas Street and Market Street. She could not say whether the crowd came from the right or left. She saw Robert lying on the ground and

people were kicking at him. There were at least 20 or 30 of them. She took her coat off and put it over his head. They were also shouting "die you bastard". She remembers turning round and seeing **D** lying with **E** over him.

After putting a coat under Robert's head she ran over to the police jeep and asked that they should get out and help them. She was not aware of anyone in the jeep at that stage. She ran back to Robert. An ambulance arrived. She had no alcohol taken. She saw nothing in the nature of fighting between the two groups, but what occurred was simply an unprovoked attack on the two men. She was not aware of any taunting or cat-calling. The police who were in the land rover remained in the land rover for at least 5-10 minutes after the end of the attack.

Mr Colin Prunty had also been to St Patrick's Hall and left it with his girlfriend. He saw Robert Hamill and **D & E** and **F** walking in the same direction along Thomas Street. They were behind him. He did not see anyone as he approached the junction with Market Street. Robert Hamill was in front of him, although the others were behind, and as he walked into the junction "a whole squad" appeared out of nowhere and jumped him. He heard "Get him, get him" being said. He noticed the police land rover just outside the Halifax Building Society. It was partly on the diagonal. It happened very quickly and his impression was that the people who jumped Robert came from the left-hand side. Robert was dragged to the ground and they started kicking him and beating him. About 20 or 30 people were involved. Some were saying "Kill the fenian bastard".

D ran down to try to help and was knocked straight to the ground. The witness ran down to try to help. He ran into the middle of the crowd. There were no

policemen around at that stage. They came to the scene after Robert had got beaten up. Two policemen came to the scene. They broke the crowd up and took one fellow away.

When they broke the crowd up they were still kicking at Robert, but he also said that once the kicking had stopped the police came on the scene then and confirmed that the police broke the crowd up when the kicking had stopped. He saw the police grab a fellow and bring him down towards the land rover. He was wearing a Rangers scarf. He was in the crowd that was kicking Robert. He later saw the man at the back of the land rover. The witness complained to a police woman that that person had been released.

Mr Hamill was taken by ambulance to Craigavon Area Hospital where he was seen by Mr B K Low who was casualty officer on duty. He found no open injury but that Mr Hamill had difficulty in breathing and a decision was made that he should be transferred to the Neuro-Surgical Unit in the Royal Victoria Hospital. There he came under the care of Mr Fannin the Consultant Neuro-Surgeon.

Mr Fannin's notes ~~was~~ referred to by Dr Patel who give evidence indicated that Mr Hamill was being treated for a relatively minor brain injury and indeed following the death of Mr Hamill, Mr Fannin commented that it was felt that he had sustained a relatively minor head injury but suffered a sudden and unexpected deterioration in his condition on 8 May.

It appears that there was little evidence of direct violence to the head. The postmortem was carried out by Dr Jack Crane, the State Pathologist and he commented as follows:

"Death was as a result of the head injuries which he had sustained. Externally his injuries appeared trivial; there was a small area of abrasion on the left side of the forehead, a bruise on the upper eyelid of the left eye and a small spot of abrasion close to the left nostril. Even internally the injuries did not seem particularly severe with only two areas of

bruising on each side of the undersurface of the scalp and a small almost hairline fracture in the front part of the skull running into the roof of the left eye socket. Detailed examination of the brain however and in particular its microscopic examination revealed widespread damage within its substance of a type known as diffuse axonal injury. This condition, most frequently encountered in acceleration/deceleration injury as a result of a road traffic accidents is also well recognised as occurring as a result of repeated blows to the head such as by punching or kicking and this would seem the most likely mechanism of injury in this case. It was ultimately the effects of the brain injury which were responsible for his death in hospital.

He had also sustained some other injuries although none of these were serious enough to have played any part in his death. There was a fading bruise on the front of the abdomen and some further bruising in the muscles of the abdominal wall which could have been due to blows during the assault. There were numerous bruises on the left upper limb, particularly on the forearm and hand which could have been sustained if the arm was struck whilst raised in aid of defensive gesture. A few further bruises were located on the right upper limb but some of these were probably related to injections given whilst in hospital. A fairly large area of bruising overlying the right side of the pelvis was due to blunt force and might have been caused by a kick".

On his initial admission to hospital an analysis carried out revealed an alcohol concentration of 221 mg per 100 ml such a level would leave no doubt that he was moderately intoxicated at the time of the incident also it was well recognised that alcohol intoxication exacerbates the effects of head injuries and may well have played a part in the fatal outcome in this case.

The injury to the brain would therefore appear to have been caused by a jolting type of injury rather than by direct contact but there was no reason to doubt that the fatal injury was sustained as a result of the violent assault referred to by the other hall patrons.

There is a fundamental difference between the evidence of the police witnesses and the patrons of St Patrick's Hall in that the police witnesses say that there was a

confrontation between groups of people hostile to each other before anyone was knocked to the ground whereas the patrons from St Patrick's Hall say that there was an unprovoked attack on the deceased and [D] as soon as they had reached the junction of Thomas Street and Market Street.

Both police officers who were present say that [D] was lying outside the bakery at number 7 but this view is not supported by any other witness including Mr Morrow the ambulance driver who puts the men in the position described by the other hall patrons. It is impossible to determine what significance, if any, is to be attached to this difference of recollection.

Apart from the issue of identification which I shall return to, the prosecution, in order to establish the charge of murder, has to prove either that the accused inflicted injuries to the deceased which caused or contributed to his death or that by his conduct as witnessed by Constable Neill he aided and abetted those who had caused such injuries.

In relation to the first proposition, Constable Neill specifically denies seeing the accused make physical contact with Mr Hamill so it is impossible for me to be satisfied beyond a reasonable doubt that the accused personally inflicted any injury upon Mr Hamill, although it is probable that he intended to and did strike him. In relation to the second proposition, Mr Prunty says that the police had not come on the scene until after Robert had been beaten up and [F] said that the police in the land rover remained there for at least 5-10 minutes after the end of the attack and [E] said that the police officer who came over to her, the only one that she refers to as having crossed the road, came over after the attack was over.

Constable Neill was ambivalent as to whether he saw the person standing over Mr Hamill before or after he had gone to check Mr Hamill. He first referred to finding

Mr Hamill still breathing and discovering that the fluid around him was alcohol. He then said he was involved in a fight convenient to that area and at first said that that was "possibly before" he had checked Mr Hamill.

He then said "I think it was probably before because I can't remember; actually it was after that I think I went to the body, Mr Hamill and he was lying there". He then said he thought it was after he made his way to Mr Hamill that he witnessed the incident involving the accused.

Constable Neill had seen Mr Hamill on the ground from across the street so he had to cross over to him. The evidence of the hall patrons suggests that Mr Hamill was lying on the ground after the attack for a considerable time before any police officer approached him and Constable Neill's evidence does little to dispel that impression.

There must, therefore, be a reasonable doubt as to whether what was seen by Constable Neill occurred quite some time in terms of minutes after the physical attack on Mr Hamill had ended and it could not, therefore, be said that the accused aided, abetted, counselled or procured the attack or that he participated in it jointly with those who inflicted the fatal injuries on Mr Hamill. The probability is that the fatal injuries had been inflicted and the attack had ceased before the event witnessed by Constable Neill, who first saw Mr Hamill on the ground from Woodhouse Street, with no-one attacking him.

The situation was a confused one and the attack on Mr Hamill and **D** was quickly executed; both **F** and **E** say that the attackers "came out of nowhere". It is not surprising that it is difficult to extract a coherent account even from the eye-witnesses. The consequence must be that I am not in a position to be satisfied beyond a reasonable doubt of the guilt of the accused on the first count and indeed proof of his involvement in the murder falls far short of the required standard.

According to Constable Neill he saw the accused twice on that evening, once as he stood over Mr Hamill and swung his foot towards him and later when he was in the fight involving Reserve Constable Atkinson.

The lighting was good in the street and Constable Neill described the person who swung his foot at Mr Hamill as being in his 20s with short hair and "a goat beard". He would have been about 5' 8" or 5' 10" and appeared to be wearing a waistcoat or a sort of a leather fronted coat with cloth arms on it. Constable Neill was about 20-30 feet away from him at that time.

A matter of a few minutes later while trying to extract Reserve Constable Atkinson from a fight with some persons, the witness was trying to pull one person out when he realised it was the same person as he had seen. He struck him with the baton at that stage. Obviously the Constable must have been close to the person when he was in a position to strike him with his baton.

Constable Neill was cross examined to the effect that he had not mentioned the height that he saw in his earlier statements but I do not see the height of the accused as being a particular distinguishing feature and I do not find it surprising that it was not mentioned in the earlier statements. It appears also that he variously described the attacker as being in his late 20s, his 20s and then simply in his 20s.

All of those descriptions are referred to a person in his 20s and I do not think that the distinctions in the description of age are significant.

The constable also had some difficulty in describing the sort of top that the man was wearing referring it to as a waistcoat or casual top "like a leather waistcoat with cloth arms" and it was certainly not established to my satisfaction that the accused had any

garment answering that description. However, I do not attach a great deal of importance to the description of clothing attempted by the constable.

In my view reliable identification is based on the features of the person to be identified rather than on his clothing. I am satisfied that Constable Neill did concentrate on his features and that he has made a reliable identification.

He next saw the person on Saturday 10 May at Lurgan RUC Station and was able to identify him, it being the defendant, Mr Hobson.

Mr Orr applied for a direction citing the well known cases of R v Galbraith and R v Turnbull. However, I consider that the opportunity for observation was good and I could not really see any feature in the case which might give rise to a doubt as to whether the identification was an accurate one. In the event the accused did not give evidence from which I draw the inference that he felt unable to give evidence which would distance him from the events witnessed by Constable Neill, and Constable Neill's evidence is fortified to that extent.

I am satisfied beyond a reasonable doubt, therefore, that Constable Neill has accurately identified the accused, Paul Rodney Mark Hobson as being the person standing over Mr Hamill and later involved in the struggle with Reserve Constable Atkinson. In considering the nature of the second count I can do no better than to quote from the recent judgment of the Lord Chief Justice in the case of Henry and others:

"Affray is a common law misdemeanour, whose elements relevant to the present case are that unlawful fighting is used by one or more persons against another or others in a public place in such a manner that a bystander of reasonably firm character might reasonably be expected to be terrified: Smith & Holgan Criminal Law, 5th Edition, page 738.

Lord Hailsham of St Marleybone LC warned in Taylor v Director of Public Prosecutions (1973) AC 964/987 that the requirement of terror rather than mere fright should not be