

watered down. It is not necessary, however, to call a witness to say that he was put in terror."

I would also adopt, as an indicator of the conduct that may amount to affray, the remarks of Stuart Smith LJ in R v Herron and Spencer (1989) 11 Cr App R (S) 226 at 228:

"However, in cases of violent crowd disorder, it is not only the precise individual acts that matter. It is the fact that he is taking part in violent disorder, threatening violence against other people, and is part and parcel of the whole threatening and alarming activity".

While those remarks were made in the context of an appeal against sentence following conviction of violent disorder under Section 2(1) of the Public Order Act 1986, the words are equally applicable to the common law offence of affray.

In this case, whether the matter commenced as an unprovoked attack on the patrons from St Patrick's Hall followed by a struggle between the attackers and the police to keep the attackers away from the prone figures of [redacted] D and Mr Hamill, or whether events started with a confrontation between rival groups, I have no doubt that any bystander of reasonably firm character would be expected to be terrified by the actions of the accused as described by Constable Neill.

The attitude and gestures of the accused in relation to Mr Hamill gave every appearance of being threatening and hostile and undoubtedly would have caused active encouragement and support to others engaged in fighting at that time and the struggle with Reserve Constable Atkinson in which [redacted] intervened was part of a sectarian confrontation or attack. I am satisfied that any bystander would have been justifiably terrified, and indeed the situation required the police officers present to call for supporting units.

I am, therefore, satisfied that the accused is guilty of affray and accordingly convict him on the second count.

Considerable publicity was given to the events which gave rise to this case, and while it is not for me to reach a conclusion on matters that are not central to the issues tried by me it does appear to be appropriate to make some comments.

It is clear from the description given by E, F, Mr Prunty and D that 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 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 officers' commitment to duty since according to that evidence the scene was peaceful immediately before the attack as the patrons approached the Thomas Street/Market Street junction.

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.

It appears that once the police officers did intervene they acted resolutely and were able to keep the loyalist crowd away from the two men on the ground and to prevent any further serious injury. The nationalists were heavily outnumbered by the loyalist crowd and it was only the presence and intervention of the police that could have been responsible for the prevention of further attacks upon them.

The fatal injuries sustained by Mr Hamill and the injuries sustained by D from which he made a speedy recovery, do not establish that a prolonged beating took

place and indeed the fatal injury could have been caused by one blow or a blow combined with a heavy fall.

I am satisfied that the officers came across the road shortly after the attack and that the evidence which suggests otherwise is explained by confusion and distress on the part of the hall patrons.

In my view the hall patrons were not in a position to be clear about the timing or extent of the police intervention and the evidence of Mr Morrow the ambulance driver shows that there was an active police presence when he arrived. The female witnesses were distraught during the attack and in no position to make accurate observations and Mr Prunty was engaged in trying to protect the injured men. He seems to place the arrest of Lunt at a fairly early stage in the exchanges, when it is clear that it did not take place until after the arrival of A.

I recognise that this raises the reasonable doubt as to whether Constable Neill was being truthful when he described the scene as he looked across the street after dismounting from the land rover. If that evidence is untruthful the purpose of it is obviously to protect his own and his fellow officers' position in the face of criticisms that have been publicly made against them and I am satisfied that no such consideration applies to his evidence implicating the accused which I accept as truthful and accurate.

However, there are three items of comment which I regard as appropriate on matters which lie outside the immediate scope of this trial, but the factual basis for which is not disputed.

1. It is obvious that the man who first approached the land rover felt that he had some information or warning of significance to impart.

He may have thought, correctly, that the timing of the proposed departure from the location was inappropriate, since the arrival of hall patrons was imminent, or he may have noticed some assembly of hostile loyalists preparing to attack the patrons.

The officers showed no interest in the significance of his message. Reserve Constable Atkinson admitted that he could not recall looking to see if any group was coming from the hall during the three to four minutes between the man's approach and the door of the land rover being opened and all of the occupants of the land rover appear to have become distracted from their observation of Thomas Street by a casual conversation with the two loyalists who had confronted the man.

2. It seems unfortunate, once the driver had realised that this individual thought it necessary to inform the police of the arrival of the patrons from St Patrick's Hall, that the land rover was then placed in a position in which none of the officers in the vehicle had a view of the junction of Thomas Street and Market Street except through the side slot of the vehicle. Placing the vehicle at a right angle to Market Street would have provided a clear view towards the junction, either to those in the front through the windscreen or those at the rear looking out through the rear doors, and even if parked in its first position or at a normal alignment to Market Street the driver would have had a good view, but the angle at which the vehicle was parked would appear to have been the least advantageous one for the purpose of observation of what has been admitted to be the location in which trouble was likely to flare up in the very situation which had just been reported to the officers.

3. It would also appear that Mr Prunty's observation, if correct, would have provided a prima facie case of serious involvement in the attack on Mr Hamill against the man arrested at the scene and taken to the land rover. It may be understandable that

A [redacted] did not personally follow up the remarks made to her by Mr Prunty, but it seems very strange that she did not regard him as a potential witness and that the facts were not placed before the officers investigating the case. Indeed on the basis of Mr Prunty's police statement there appears to have been sufficient material available on the papers in the case to merit serious investigation of that man's involvement and it should have been easy to relate Mr Prunty's observation of the man to the arrest of him by

A [redacted].