

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

v

PAUL RODNEY MARC HOBSON

[REDACTED]

Paul Rodney Marc Hobson was convicted at Belfast Crown Court, on 25 March 1999, by [REDACTED], sitting without a jury, of affray contrary to common law. He was sentenced to 4 years imprisonment. On the same bill of indictment he was acquitted of murder. He appeals against his conviction and sentence.

The facts are to be found in the judgment of the trial judge in which he gives the reasons for the conviction of the appellant.

The general background

In Portadown the junction of Market Street, High Street, Thomas Street and Woodhouse Street is recognised as a potential trouble spot. The reason is that at weekends two sections of the community cross each other's paths as they make their journey home from their respective places of evening entertainment. The trial judge described one group as being "loyalists" and the other as "nationalists", but indicated that this was not intended to reflect any precise political affiliation on the part of either group. We adopt the same descriptions.

The nationalists customarily make their way from a hall in Thomas Street into Woodhouse Street and from there they go to their homes. The loyalists make their way home from a club and other places into High Street and then into Market Street.

On the evening of 26 April and early morning of 27 April 1997 a land rover carrying four police officers was positioned close to this junction. Two of the four police officers, Reserve Constable Atkinson and Constable Neill, described what happened.

Reserve Constable Atkinson's evidence

At around 1.30 am the land rover was parked in Market Street and the driver, Constable Neill, moved it close to the entrance to Woodhouse Street and then moved it closer to the entrance to Woodhouse Street. While it was parked there a man crossed in front of it and went into Woodhouse Street. Two men coming from the direction of High Street exchanged words with this man. A police officer, Constable Cornett, who was sitting in the front of the land rover, told them to move on. Reserve Constable Atkinson said that the driver's door of the land rover was opened from the outside and the driver, Constable Neill, appeared to be pulled out. Reserve Constable Atkinson got out through the rear door of the land rover and went to the aid of Constable Neill. While he was on his way he became aware that about fifty loyalists and twelve nationalists were exchanging sectarian abuse. Accompanied by Constable Neill he went to the aid of a nationalist who was engaged in an exchange with three or four loyalists. Reserve Constable Atkinson escorted this person into Woodhouse Street for his safety and after he turned round he saw two people lying on the ground.

Fighting had broken out and bottles were being thrown and the reserve constable ran towards these two people and helped to shield them from the loyalists. At this stage an ambulance was called to the scene. Reserve Constable Atkinson and Constable Neill removed a man from the group of loyalists and took him to the rear of the land rover. Reserve Constable Atkinson was grabbed by the man who had crossed into Woodhouse Street in front of his land rover earlier in the evening and there was a struggle. At this stage the reserve constable glanced across the road and saw three people jumping on one of the two men who had been lying on the ground. He went to the assistance of the man on the ground and he remained with him for some minutes until police

reinforcements arrived. One of the officers who arrived at the scene, A [redacted] escorted a person who was wearing a red, white and blue scarf to the back of the land rover.

Constable Neill's evidence

The evidence of Constable Neill was that the person who passed in front of the police vehicle, when it was parked at the entrance to Woodhouse Street, appeared to be saying something to the policemen in the land rover. Constable Cornett, who was sitting on the front passenger seat of the land rover, opened her door and asked the man what he had said. He told her that people would be coming from Thomas Street and crossing into Woodhouse Street.

Constable Neill confirmed that two men coming from High Street approached the man that had passed in front of their vehicle and squared up to him until they were told to move on by an officer in the land rover. He said that the driver's door was opened and a person started to pull him down from his seat and shouted at him "you sat there and did nothing. You sat there, watched that happening and you did nothing". Constable Neill said he did not understand what the person was talking about. He got out of the vehicle and a woman shouted something similar at him.

Constable Neill saw a crowd of forty loyalists positioned at the junction of Thomas Street and another group of nationalists, about eight to ten in number, shouting at each other. A number of fights broke out and he escorted a man to the mouth of Woodhouse Street. As he spoke to this man someone behind the constable punched the man in the face. Constable Neill managed to take the assailant to the back of the land rover where bottles were being thrown.

The constable then went to the aid of Reserve Constable Atkinson and at some stage he noticed a body on the ground. When he went to this person (who was Robert Hamill) he found him lying on his back on the road with a liquid that looked like blood around his head. His breathing was described as "like rasping" as if he had been stabbed.

Mr Hamill was later taken to hospital and the medical evidence was that after a period of unconsciousness he died in the Royal Victoria Hospital in Belfast on 8 May 1997.

The constable said that he saw someone standing over Mr Hamill as he lay on the ground and that this person appeared to be shouting or saying something to him and he said that he saw this man swing his foot towards Mr Hamill in the region of his head and shoulders.

The constable's recollection appears to have been unclear as to whether he saw this before he went to Mr Hamill or after he had made his way there and had gone off to split up another fight.

He saw the same person that had been swinging a foot towards Mr Hamill when this person was engaged in a fight a few minutes later. At this time the person was in the middle of the fight and Constable Neill tried to pull him out but he would not let go so he struck him with his baton.

On Saturday 10 May, at Lurgan RUC Station, the constable identified the appellant as being the person who had swung his foot towards Mr Hamill in the area of his head and shoulders.

The judge's finding

The trial judge found that the probability was that the fatal injuries suffered by Mr Hamill had been inflicted and that the attack which led to his death had ceased, before the events witnessed by Constable Neill who first saw Mr Hamill from Woodhouse Street with no-one attacking him as he lay on the ground.

The judge found that the lighting was good in the street and that Constable Neill was about 20-30' away from Mr Hamill when he saw the person who swung his foot at Mr Hamill. The constable described him as being in his twenties with short hair and "a goat beard" and as about 5' 8" or 5' 10" in height. He said that he appeared to be wearing a waistcoat or a sort of leather fronted coat with cloth arms on it.

When the constable attempted to extract the man from the fight a few minutes later, as the judge remarks, he must have been very close to him to have been in a position to strike him with a baton.

It is noted by the judge that in cross-examination it was put to Constable Neill that he had not mentioned the height of the person in his earlier statements, but the judge did not see the height of the accused as being a particularly distinguishing feature and he did not find it surprising that it was not mentioned in these earlier statements. At various times the constable described the attacker as being in his late twenties, his mid-twenties and then simply in his twenties but the judge did not find these differences in the description of the age of the person as being of significance.

The constable had difficulty describing the type of top that the man was wearing and it was not established to the trial judge's satisfaction that the accused had any garment answering the description given by the constable. However he did not attach a great deal of importance to the description of clothing attempted by the constable. In his view reliable identification was based on the features of the person to be identified rather than on his clothing and he was satisfied that Constable Neill had concentrated on the man's features and that he made a reliable identification. The judge noted also that the constable had identified the appellant at the police station a fortnight later.

The death of Mr Hamill caused a good deal of public attention because it was claimed by some that the four police officers in the land rover had allowed the incident which resulted in his death to occur and that they had taken no action to prevent it.

Counsel's submission

Mr John Orr QC, who appeared with [REDACTED] for the appellant, submitted that the trial judge ought to have acceded to the submission which they made that there was no case for the appellant to answer at the conclusion of the evidence for the prosecution.

Mr Orr emphasised that the only evidence against the appellant came from Constable Neill who was a witness with a motive to secure a conviction because of the public interest in the affair and the attendant criticism of the police. Constable Neill had not been told if he was to be charged with an offence of criminal neglect of duty arising out of the incident. So it is said that the constable

had a motive for putting put himself in the most favourable light by showing that he did take action against the loyalists.

Mr Orr drew the court's attention to differences between the evidence of Constable Neill and civilian witnesses, including an ambulance man, as to where Mr Hamill was lying. The constable had referred to Mr Hamill having breathing difficulties, but the ambulance man said that this was not the case when he went to him. He referred to the fact that the constable had found difficulty in putting his evidence in chronological sequence. Reserve Constable Atkinson said that he got out to go to Constable Neill's aid and then they both moved over towards the crowd. However, Reserve Constable Atkinson said that no fighting took place before they got out. The question was posed as to why critics would have come to the land rover and launched a verbal attack on Constable Neill if there had been no fighting at that stage. Reference was made also to the difference between the evidence of Reserve Constable Atkinson and Constable Neill as to whether they both helped to remove a nationalist to safety and about what happened when, at the outset, the person crossed in front of the police land rover. Finally Mr Orr mentioned that although Constable Neill claimed that he had rescued Reserve Constable Atkinson several times from fights no reference was made to this by the reserve constable in his evidence.

Criticism of the identification evidence

Criticism was levelled at Constable Neill's ability to identify other persons on that evening. He could not give a description of the person who had run at Mr Hamill with a bottle or say how many women there were in the nationalist crowd. He was unable to describe the "good Samaritan" who had passed in front of the land rover at an early stage in the events of that evening nor could he describe any of the loyalists who had attacked the nationalists. He was unable to describe a nationalist who ran in and punched a man although he managed to grab him. Nor could he describe any of those who were fighting with Reserve Constable Atkinson other than the appellant.

As for the identification of the appellant, Mr Orr submitted that this was a sighting which took place for a matter of seconds in chaotic circumstances. There was no evidence to support that of Constable Neill. Not only had he not mentioned his height until the preliminary inquiry but his evidence about a waistcoat had changed from being a cloth one to a leather one and then a waistcoat with cloth sleeves.

Although the constable would have had an opportunity to look at the trousers and footwear of the appellant he was unable to describe them and he was unable to say if the appellant had kicked with his left or right foot though he was able to say that no contact was made.

Conclusion on the issue of identification

Having considered the identification evidence and the detailed criticism of it we have no doubt that the conviction based upon it is safe. The learned trial judge examined the facts in detail and dealt with the submissions of the defence comprehensively in his judgment.

Applying the well known test put forward by Lord Lane CJ in R v Galbraith [1981] 1 WLR 1039 at 1042 and the principles to be applied in cases of identification set out in R v Turnbull [1977] QB 224 we do not accept that the judge ought to have come to the conclusion that the prosecution evidence, taken at its highest, was such that a jury properly directed could not properly have convicted upon it.

We were reminded by Mr Orr that if the trial judge erred in law by failing to uphold a submission of no case to answer, reliance could not be placed by the judge, or this court, on subsequent events in the trial. This basic principle has been accepted by the courts on numerous occasions.

The appellant chose not to give evidence and the trial judge drew the inference, as he was entitled to do, that he felt unable to give evidence through which he would distance himself from the events witnessed by Constable Neill and held that this fortified Constable Neill's evidence: see Murray v DPP [1994] 1 WLR 1. This played no part in his ruling at the end of the Crown case.

Causing an affray

Mr Orr submitted that the evidence did not justify a finding of guilt on the count of affray contrary to common law, since the evidence was insufficient to establish that a person of reasonable firmness would be terrified. He referred to those passages in the evidence in which civilian witnesses say that this was a swift attack with no ongoing fighting. This has to be considered against the evidence that the police had to send for reinforcements and that Constable Neill had to draw his baton. Looking at all the evidence we are satisfied that the trial judge was entitled to find that the offence of causing an affray had been made out.

Conclusion

We find that the conviction of the appellant was safe and his appeal against conviction is therefore dismissed.

The appeal against sentence

Mr Orr submitted that the sentence imposed of 4 years imprisonment was manifestly excessive. He contrasted the sentences which were imposed in R v Henry and others (unreported December 1998) and he referred to R v Anderson and others (1985) 7 Cr App R (S) 210 where Robert Goff LJ said:

"When one is dealing with a case of an affray, plainly a distinction has to be drawn between those cases where the affray is premeditated and those cases where it is spontaneous".

In passing sentence the learned trial judge had in mind the case of R v Henry and others because he stated that in his opinion it was an entirely different kind of case where a situation arose completely unexpectedly. In his opinion this was a very serious case and one that had to be dealt with as such and for this reason he regarded the appropriate sentence as being one of 4 years imprisonment. It is plain that the trial judge had in mind the distinction mentioned by Goff LJ in

Anderson and others. We do not regard a sentence of 4 years imprisonment as in any way excessive for an offence of this nature. The appeal against sentence is therefore dismissed.