

and saw the 2 groups cat calling at each other and scuffles then broke out in 3 or 4 places.

240. There were about 50 Loyalists and 10 to 12 Nationalists. He helped Constable Neill to pull the man from the crowd across Woodhouse Street, although Constable Neill has no recollection of Reserve Constable Atkinson being present. When this person had been removed to Woodhouse Street and as the Reserve Constable turned to regroup with his colleagues he observed 2 bodies lying on the roadway. He kept the crowd back with his baton while Constable Neill checked these persons. He was involved in another scuffle with a person who he believes to have been Mr Mallon, then returned to assist the injured persons. The conversation with the 2 men at the driver's door of the police vehicle lasted for 3 to 4 minutes. He can not recall whether he looked back during those 3 or 4 minutes to see if there was any group coming from St Patrick's Hall. When he got out of the landrover and ran round to the driver's side there had been no bodily contact between the parties that he could see. Verbal abuse was exchanged between the rival groups before any blows were struck. The attack which caused Mr Hamill and **D** to be on the ground took place in the period of time which it took him to run a man across the Main Street and into the mouth of Woodhouse Street.

241. **P40** states that the landrover was stopped at the junction of Woodhouse Street and Market Street with the front of the landrover pointing in the direction of Halifax Building Society (point LR3). At this time they were talking to the 2 male youths. At this point the man told Constable Cornett that his mates were coming from St Pat's Hall. The Reserve Constable noted a crowd of approximately 25 persons walking from Wellworths Shop towards Church Street. He heard shouting which was good-natured and not threatening coming from the direction of Thomas Street and informed Constable Neill. At this point Constable Neill's door was pulled open. When he got out of the landrover he noted that there was a crowd of approximately 50 youths and men and that there were several fights taking place and several females screaming and shouting. A male person approached him and asked "what the fuck are you going to do?" He tried to get this man into Woodhouse Street and subsequently became involved in restraining another male person who had come from the direction of Woodhouse Street. While restraining these persons he observed 2 males lying in the middle of the road. He made his way across the street to Thomas Street and assisted other police in moving the crowd back.

242. Reserve Constable Cornett's evidence is that the conversation with Mr Mallon took place at position LR2 followed by the youths approaching the landrover and talking to police while the landrover was at position LR2, she looked down Thomas Street and saw no-one. During the conversation with the 2 youths ~~at~~ LR3 she was aware of people walking up the other side of Main Street There was no sign of rowdiness from these people. Thomas Street was still clear. When Constable Neill was pulled from the landrover all of the police officers alighted. When she alighted she could see different groups fighting and a woman screaming. She ran back to the landrover to call for assistance. After she had done this she noticed 2 people lying on the ground and then made a call for an ambulance. At the time of the incident there were approximately 50 Protestants and 10 Catholics.
243. The evidence of Mr Jones in relation to his observations from his first floor flat in Thomas Street is that one of the 2 persons who he ultimately saw lying on the road appeared to at an earlier stage of these incidents to have assaulted Mr Jones' girlfriend's brother who was standing at the junction of Thomas Street and High Street. The person involved in this incident was the man wearing the leather jacket.
244. He states that when he and his girlfriend when down to bring her brother into the flat he could hear people shouting abusive remarks at each other. These remarks were phrases such as "Orange bastards", "Fenian bastards", "Up the RA" and "Up the UVF". He took his girlfriend's brother into the flat and then when he had done so it would have been no more that 2 minutes before he looked out again and saw the 2 men lying on the roadway.
245. Mr Jones states that on the second occasion when he looked out of his window and the 2 men were on the ground police had arrived and appeared to be pushing the crowd back up towards the Church area.
246. Miss Woods, Mr Jones' girlfriend, states that, when she had brought her brother in to the house, after a few minutes she went back over to the window and looked out. She could see the 2 men on the road, there was a woman with one of them. She was screaming. She saw a policeman approach the man who was lying on his back with the woman. The woman was screaming abuse at the policeman. When she initially looked out the window she saw a group of about 7 people mostly males standing in Market Street, one of these men was wearing a black leather jacket. He was the same man she saw later lying in Market Street when he appeared unconscious. When she went down to bring her brother in to the flat she was aware of some sort of fight going on at the junction but took no notice of it. It would have

been at the most 5 minutes later that she looked out of the window and saw the men in the roadway. She first went to the window because of the noise. The only thing that sticks out in her mind is the words "Orange bastards". On the second occasion when she looked out the window there were definitely 2 police there, the woman with the man on the ground shouted something to the effect of "get away you black bastards, it is all your fault".

247. P45 evidence is that when he looked out of his flat towards the junction he saw a number of persons kicking a person on the ground, there was a racket in the street, shouting and screaming. There seemed to be other skirmishes going on as well as this particular incident. There was running about and jostling with quite a few people. He could see a police landrover parked over on the other side of Market Street near the Alliance & Leicester. There were people near it and when the police went towards them they backed off. Similarly Mr Thornbury's evidence is that when he looked out towards the junction there was a lot of shouting going on and there were 2 groups of people squaring up to each other. When he first looked out he saw 2 boys lying on the street, he saw the police in the middle of the road. There were only about 2 policemen there - one may have been a woman, there were trying to keep the 2 groups apart.
248. The evidence of Mr Morrow, the ambulance paramedic is that when he arrived at the scene 2 rival groups appeared to be taunting each other and it seemed that missiles were being thrown. He recalled that there were police officers about, but took no interest in what they were doing.
249. The evidence of A is that she arrived on the scene and assisted police in controlling the crowd before the ambulances arrived.
250. This is in stark contrast to the evidence of Mr McNeice who says that he approached the scene from the direction of Woodhouse Street. He says that the police made no effort to help the injured men at all and it was only when the ambulance came that they got help. Similarly, Mr Hull said that at no stage did the RUC leave their landrover over a period of about 15 minutes. One girl banged on the back of the landrover pleading for help and the RUC ignored her. The RUC left their jeep only when the ambulance arrived and stood in front of the gang of youths.

#### CONCLUSIONS

251. I consider that on the basis of the available evidence it is not possible to establish with certainty the sequence of events on this occasion.

252. It is also impossible to establish with certainty the length of time over which the attack on Mr Hamill took place. The group emerging from Thomas Street state that the attack took place suddenly and completely without warning while police were in their landrover and may have continued for some minutes.
253. Police state that the attack had not taken place prior to their having emerged from their landrover but rather took place after general skirmishing had broken out and lasted only for a very short period of time during which they were powerless to assist.
254. This assertion is given some support by the timing of the radio messages from Reserve Constable Cornett, the first messages appear to have been for assistance at 1.45 and 1.47 am and subsequently for an ambulance at 1.48 am.
255. Pauline Newell, who appears to have passed the scene of this incident a short time before it began states that she heard "bickering" from the opposite side of the street ie the Woodhouse Street/Market Street junction. This may provide some support for the proposition that there were verbal exchanges prior to fighting breaking out.
256. The evidence of the other witnesses as set out above would appear to support the proposition that there were oral exchanges in the course of this incident, that there were a number of skirmishes and that in the course of the incident police were on the ground trying to keep the parties apart. However these statements do not assist in determining how the incident developed.
257. It is, in my view, impossible, on the basis of the available evidence to establish with certainty exactly the course which this incident took and its duration.
258. Alcohol had been consumed by the persons coming up Thomas Street and timings are difficult to establish with any certainty. It would appear that they may have left St Patrick's Hall sometime between 1.20 am and 1.30 am. The first radio message from Reserve Constable Cornett requesting assistance was timed at 1.45 am.
259. The Thomas Street witnesses' evidence clearly points to a very sudden attack. E refers to having spoken to a policeman after the attack was over she thinks around the time the ambulance arrived. F

F denied having seen police officers trying to break up any fights during the attack and alleged it was 5 or 10 minutes or more after the attack before she went to the landrover. Mr Prunty seems to suggest that the attack lasted perhaps 10 minutes, but seems somewhat confused as to the point at which police intervened.

260. While there are inconsistencies in the police evidence the occupants of the landrover are unanimous in their assertion that when they first alighted from the vehicle no one had been put to the ground in the course of the struggle.
261. Their assertion that the disturbance continued even after Mr Hamill and D being put to the ground is supported, for example, by Mr Morrow the ambulance driver, by other police who arrived at the scene and by a number of civilian witnesses.
262. What does clearly emerge from the evidence, however, is that the occupants of the landrover were warned by Mr Mallon that persons were following him up Thomas Street. The occupants of the landrover were aware that potentially rival factions were making their way along High Street and Market Street yet did not appear to take any specific action in order to monitor the junction. In fact following this warning the police landrover came to a halt, broadly, facing away from the junction of Thomas Street and Market Street/High Street.
263. None of the police officers was able to explain what had caused someone to pull Constable Neill from the vehicle and what that person meant when they said words to the effect of "you let that happen".
264. Constable Neill speculates that a fight may have taken place and concluded before police emerged from the landrover.
265. It is impossible to be certain, however the evidence of Mr Jones in relation to an alleged assault at the corner of Thomas Street and Market Street may be significant in this regard.
266. A significant event may have been the confrontation between Mr Mallon and Bridgett and his associates at the mouth of Woodhouse Street which appears to have diverted the attention of the occupants of the police landrover.
267. Reserve Constable Neill says that he looked up Thomas Street when the landrover was at LR2 and saw no-one. He gave no specific instructions to the other occupants of the landrover to keep the junction under

observation. He would have taken it that those in the back of the landrover would have been doing so.

268. Reserve Constable Atkinson's evidence is that he did not hear what was said by Mr Mallon and that he can't recall whether he looked back towards Thomas Street from the landrover.
269. Reserve P40 states that he heard shouting coming from the direction of Thomas Street but that this was not of a threatening nature, and informed Constable Neill, where upon the latter was pulled out through the landrover door. None of the other occupants of the landrover refers to this comment from Reserve Constable P40
270. Reserve Constable Cornett was aware of people walking up the other side of the Main Street when the landrover was at LR3. There was no rowdiness from these people. Thomas Street was still clear.
271. The issue in this case whether it is capable of proof beyond reasonable doubt that any of the officers who were in the landrover on this occasion wilfully neglected to perform their duty. In this context it must be borne in mind that the neglect must be wilful and not merely inadvertent and that it must be culpable in the sense it is without reasonable excuse or justification.
272. In Ditham the facts demonstrated beyond doubt that the accused witnessed a serious assault and failed to take action. The question in this case, however, is whether it can be proved beyond reasonable doubt that any of the police officers saw the assault taking place and wilfully failed to intervene or wilfully ignored the immediate risk of a violent incident of which they were or ought to have been aware, in either case without reasonable excuse or justification. In seeking to determine this issue it must be borne in mind that the misconduct must be calculated to injure the public interest so as to call for condemnation and punishment.
273. It seems clear that if the account which is given by the Thomas Street group is correct the initial assault on Messrs Hamill and D was so sudden as to have afforded police no opportunity of preventing it. This account, however, conflicts with the police version of how the assaults came about.
274. The duration of the assaults is impossible to ascertain and there is conflict between the members of the Thomas Street group and indeed within the evidence of Mr Prunty as to the point ~~of~~ <sup>and</sup> circumstances in which police intervened.

275. In my view the conflicting and confused state of the evidence renders it ~~is~~ impossible to prove beyond reasonable doubt that police observed the attack on Mr Hamill and D and did nothing to assist.
276. Similarly the evidence in my view does not demonstrate that prior to Constable Neill being pulled through the landrover door police were aware that any conflict was taking place behind their vehicle or that there was an immediate risk of a conflict of such a serious nature taking place. Their evidence in relation to persons walking up Market Street/High Street from the direction of "Boss Hoggs" is that they were in groups, perhaps 4 or 5 and were well behaved if somewhat noisy, but not threatening.
277. This is not inconsistent with the sudden and unexpected nature of the assault as described by the Thomas Street party
- 277a. Although with the benefit of hindsight it may will have been more effective for the police officers to deploy their resources in a different way, having been spoken to by Mr Mallon, I do not consider that the evidence demonstrates a wilful neglect on the part of any police officer to perform a duty which is calculated to injure the public interest so as to call for condemnation and punishment.
278. For the reasons set out, therefore, I do not consider that the evidence warrants prosecution of any police officer in relation to these incidents.
279. Similarly in relation to the allegation by witness A that Reserve Constable Atkinson may have been in touch with Allister Hanvey in order to tell him to get rid of the clothes which he had been wearing on this occasion and that he had been keeping him informed of developments in the police investigation, I do not consider that the evidence is sufficient to warrant prosecution.
280. It might be thought highly suspicious that there was a telephone call from Atkinson's phone to Hanvey's home at 8.37 am on 27 April, the day of these incidents, and a further such call on 2 May 1997.
281. Witness statements have however been recorded from Mr and Mrs McKee and from Mrs Atkinson which give an innocent explanation for these telephone calls.
282. There is no other evidence in relation to these matters.

283. I do not consider that the evidence warrants prosecution of any officer reported on this file for any criminal offence.

*R.A.C.*

W A R McCAREY

July 1999