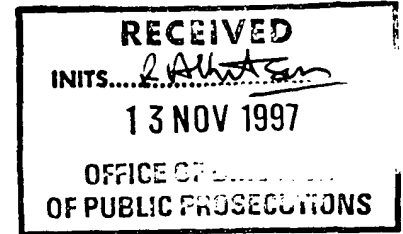


Mr Kitson

Murder of Robert Hamill

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Report and Opinion



1. Counsel was asked to consult with a number of specified witnesses in this case, to assess their evidence and to give an opinion in the case. In view of the fact that some of the accused were, and some are in custody I have been asked to proceed in the absence of the Pathologist's report. I have verbal instructions only to the effect that Mr Hamill's death was the result of the attack upon him, most likely head injuries. Any opinion expressed is therefore dependent this being later confirmed in the Report.
2. I have conducted 4 consultations in the case. 3 in Belfast and 1 in Portadown. I have seen the following witnesses.
 - (a). Jonathan Wright. I saw Mr Wright with Mr Davidson in attendance. Mr Wright made two statements to the police. The first, dated 11 May 1997, was a general statement of his movements and his companions on the evening in question. In it he denies all knowledge of any information in relation to the incident. He made his second statement on 15 May 1997. I specifically asked him why he had decided to make a second statement. He stated that he was distressed by the death and he decided it was important to tell the truth. I do not propose to analyse the statement at this stage of my opinion. Sufficient for present purposes to say that given the normal disadvantage inherent in using a witness who has two contradictory statements on file, I was satisfied that Wright was apparently reliable as a witness and was satisfied it would be appropriate to give full weight to his statement in assessing the evidence in the case.

(b) Witness A. I saw witness A in the presence of Mr Davidson. Due to her age she was accompanied by her parents who seemed respectable and responsible people. I took her through her statement. She was not unexpectedly nervous and slightly hesitant in some of her answers. However she struck me as being entirely credible and reliable in her evidence. I would have been content to give full weight to her evidence in my opinion. It was clear that she may be a reluctant witness and I explored this with her first of all and then discussed it with her parents and the police. She stated that she did not want to give evidence. She further stated that the reason she did not want to give evidence against Hanvey was that she still loved him and that as against the others they were her friends. She realised the importance of the matter but was quite clear that she would not give evidence. Were there evidence upon which it would have been proper to make an application under Art.3 of the Criminal Justice (Evidence) N.I. Order 1988 I would advise so doing. The position however was that it was only her parents who said anything which would have laid the grounds for this. On the basis of her declared reason for not wishing to give evidence no application could legitimately have been made. Accordingly I asked Mr Davidson to liaise with the police and obtain instructions for me as to the position. I was instructed that Witness A was not to be a witness and should therefore be ignored for the purposes of my opinion.

(c) Witness B. I saw witness B with Mr Davidson in attendance. His father was also present. Witness B informed me that he had no recollection of the events set out

in his statement recorded on the 9th of May 1997. He was too drunk to recall the events of the evening. I pointed out the averment at the end of his statement "I wasn't drunk." He informed me that this was false and that he had been told to insert this lie by the police. He claimed the information contained in his statement was gleaned from gossip and talk from around the town about the incident. He agreed that he had just been wasting police time. It was perfectly clear to me that his position was probably at least partially induced by fear but it was clear that there would be no evidence to support any Article 3 application even if it would have been proper to consider one in these circumstances. In any event the police view was that the father was a local businessman who may have felt his son giving evidence would be commercially disastrous. In the event Witness B cannot be considered as a reliable witness on the papers.

(c) Colin Prunty. I saw Mr Prunty twice. First in Belfast where he was accompanied by a clerk from [REDACTED]'s office. Mr McCarey was in attendance. Then I saw him in Portadown Police Station. Mr Kitson was attending.

On the first occasion I took him through his statement dated 8 May 1997. He was a good historian and entirely credible. I gave him a number of opportunities to add to or change the account he had given. He did not exaggerate or add to the account in any way. I have to say he was one of the most impressive factual witnesses I have spoken to in some time. At the end of the consultation he asked me about the progress of the case and in particular stated that he had heard that a number of those charged were due to be released. On the Monday after the consultation and before I had completed my opinion Mr Kitson informed me that

Mr Prunty had seen a news programme and observed a Mr Forbes being released and informed the police that Forbes had been the person he had observed as being involved in the attack. The witness had previously been unable to identify the person involved but it was clear from other evidence that that person was Lunt. As a result I arranged to see the witness again and did so with Mr Kitson in attendance. I asked the police to produce photographs of both Lunt and Forbes. Were a prosecution to proceed I realised that this would have to be disclosed, but as he was not purporting to be an identifying witness in the case of Lunt I felt this was the only practical way of proceeding. Mr Prunty was shown photographs of both Lunt and Forbes with no identification of the names. He had no hesitation in picking out Forbes as the person he was referring to in his statement. I went so far as to explain the nature of the evidence against Lunt and the difficulty his present evidence created, he remained adamant that he was correct. I have to say that not only was he adamant he was impressive as being totally convinced. The extent of his conviction was such that he stated that, if asked, he would say in evidence that Lunt was not the person he was describing in his statement. I shall deal with the effect of this as I go through the evidence against each of the defendants in turn.

3. The background to this case is that on the early morning of 27th April 1997 a group of "loyalists" set upon two Catholics who were amongst a number of people who had left St. Patrick's Hall Portadown. It appears that a number of those leaving the hall made their way through the town to walk home. They came into

contact with a number of Protestants some just in the town and some coming back from an organised night out to the Coach Inn Banbridge and who had debussed and started to make their way home. Both groups had to make their way to the area of Market St, At or about the time of the incident a Police Landrover was in the area of High Street/ Market Street as incidents of a public order nature do occur in this area. It is unclear exactly how a disturbance started, but the result was that a large group of apparent protestants set upon Robert Hamill and [D]. There may on the evidence have been some preliminaries involving mutual sectarian abuse, and individual skirmishes and blows, but , ultimately, the two I.P.'s were knocked to the the ground and violently attacked mainly by kicks and punches although there is evidence of bottles being around. Mr Hamill who appears to have suffered the main brunt of the attack was on the general description clearly being kicked by a large group and was probably unconscious for a significant time during this [D] was also beaten though not as seriously. Mr Hamill died as a result of his injuries on 8 May 1997. He was unconscious between injuries and death. As a result of the police inquiries a number of persons were arrested and some of these have been charged. I will deal with the admissible evidence against each in turn.

4. FORBES.

Witness "A" implicated Forbes in the attack upon the deceased. This evidence is no longer available. Witness "B" observed Forbes punch a fellow in the face and run off. This evidence is no longer available. Forbes was observed by [A] p.206. She observed him to be in the crowd. Whilst she can say that there was fighting she cannot say Forbes was involved. She observed that he was wearing

a light coloured check shirt over cream coloured trousers.

Mr Prunty now says that Forbes was the person he described in his statement.

At page 14 he describes only one person who he can pick out as being involved.

He did not know this person and identifies him as being a man who was wearing

a Rangers scarf and who was taken away to the police landrover. He then says

that this person was later released by the police causing him to complain to a

policewoman. He described the man generally. It is noticeable that the general

description would fit both Forbes or Lunt. In his police interviews Forbes accepts

that he was in the area at the time. He maintained that he was speaking to the

police when the incident occurred. In fairness to him he answered all questions put

to him and did so in his first two interviews without having a Solicitor.

Forbes declined to go onto an identification parade. The only evidence that he was

the person seen by Prunty is his identification of him in a video clip, and now by

photograph. The identification contradicts all the evidence in relation to the original

statement. In these circumstances my opinion is that there would not be a

reasonable prospect of convicting Forbes on Prunty's evidence unless some clear

explanation of the inconsistency emerges.

I am not hopeful that this can be done but given the importance of this case and my

view of the witness, I would feel that every effort be made to check the position re

persons at the landrover. For example Prunty has now added to his statement by

saying that he struck the person in the back of the landrover. Was this seen by

anyone? Does it jog anyone's memory? Prunty says that he saw the person being

brought to the back of the landrover. It is interesting to note that Forbes states that he was at the landrover. Was anyone other than Lunt brought to the landrover? Mr Johnston p. 40 saw someone he cant describe. Con Neill at p.176 " grabbed this male and took him to the landrover" then see 178(d) "It wasn't actually between the fellow I had in the "landrover". Con Atkinson at p.184 "..... Constable Neill pulled one of them from the crowd..... I accompanied Con Neill to the landrover."

If anything further arises from this I shall of course be happy to consider it. At present however I have to say that having looked at all the evidence relating to Forbes there does not appear to be sufficient evidence to advise prosecuting him for any offence.

5. BRIDGETT:

He was originally referred to by Witness A, this evidence is no longer available. Witness B named him but only as someone injured. In any event that evidence is again unavailable. [REDACTED] saw him and Dean Forbes at the back of the Landrover p.44, but did not see him do anything. Jonathan Wright,p.65 saw him trading punches with one person. This was a bit to the left of the main fight. Con Neill p.175 observed Bridgett face to face with a male near the landrover. He had a bottle of cider in his hand. Later after helping taking Lunt to the landrover he saw Bridgett with blood around his mouth. Con Silcock was told by a woman that one youth had jumped on the head of one of the injured men. A member of the crowd called to him he responded to "Stacey" he was bleeding from the nose. This is clearly not admissible evidence against him. Con Cooke p.198 places him as

being at the front of a crowd trying to get at the injured persons. A

observed Bridgett as being in the crowd, he had blood coming from his nose.

In interview he said he was first at the landrover, that he was then struck on the nose and then he went home. He denied the sightings of him as one of the crowd. Forensic evidence is available and shows that blood coming from him was found on a sample taken from the right leg of Hamills jeans. No blood from Hamill was found on his clothing although his own blood was, this despite the fact his clothes were not seized until the 6th May.

This is a difficult case. Were it to be alleged by a witness that Bridgett had been seen assaulting Hamill the blood evidence would be strong confirmatory evidence. As it stands this coupled with the police sightings of him at the front of the crowd confirm that his account to the police was not truthful. It shows that he was close enough whilst bleeding to have dripped some blood onto the deceased or that his blood splattered over to Mr Hamill. I do not think the position is presently clear enough and would like further information as to the type of stain and its extent before deciding whether this would be strong enough to be probative of contact. And, to be complete, it does not seem to me that the papers identify the person who punched Bridgett and whether this may have occurred either in the vicinity of Mr Hamill or the person may have been one of Mr Hamill's friends or colleagues who could have contaminated Hamills jeans.

What can be said is that on the available evidence one can show Bridgett was very much involved but the capacity in which he was involved is not as yet clear. I

will further advise when all information is to hand.

6. HANVEY:

Both Witness A and ~~Witness B~~ gave statements which made clear that Hanvey was directly involved in the assault upon Mr Hamill whilst he was defenceless on the ground. On the basis of their statements I would have had no hesitation in advising that a charge of murder would have been appropriate against him. This evidence is not now available.

I have checked the papers for other evidence. His own witness statement is not surprisingly exculpatory in nature. He is not observed by any other witness who has identified him as taking any part in the incident. He was interviewed and denied any involvement in the incident involving either of the I.P.'s.

On the available evidence I have to advise that there is no reasonable prospect of a conviction for any offence arising from the incident.

7. HOBSON:

Hobson is also known as "Muck". He was identified by Witness A as one of the group who was kicking Hamill on the ground. He was observed by Witness B as being involved in fighting with 2 other people, one of whom would appear to be the witness Prunty. On these statements I would have advised a charge of murder in relation to him. These statements are not now available.

In examining the papers he is referred to elsewhere. His own witness statement is exculpatory. Wright at p.64 states that he ran down into the crowd fighting in the middle of the road. He was observed to lift his hand and reach out for someone. He did not see him do anything else. Con Neill saw a male late 20's with a goat

beard kick at the injured man he knows to be Hamill on the ground. He noted him again later, ~~again~~ involved. I note this incident is not mentioned in the notes made re the statement. I also note the phrase used is "kick at". Constable Neill has confronted this person and identified the accused as him. P40 observed a man in the crowd of a similar description. He was being aggressive and taunting other persons and had to be pushed back. Con Cooke observed someone he thought to be a [REDACTED] but who he says was the defendant who was trying to push past the police. He does not mention a beard in his description. In his interviews he completely denied any involvement in the assaults upon Mr Hamill and he declined the offer of an identification parade.

It must be clarified whether or not Constable Neill saw a kick or an attempted kick. If it was the former and the pathology report suggested that the deceased died from multiple blows such as kicks then a charge of murder in relation to Mr Hamill may be justified. If it were however an attempt to kick then it may be difficult to show the particular intent for attempted murder, even allowing for the fact that certain witnesses may establish that members of the crowd were shouting "Kill them". It would seem to me more likely that there would be a reasonable prospect of convicting the accused of attempting to cause grievous bodily harm with intent.

This of course may, depending on the attitude taken to lesser charges, be added to by an affray charge.

8. LUNT:

Lunt was identified by police in the clearest of fashions as being a person who was

arrested by them during the incident, taken to and placed in the landrover, then after some period being released to be spoken to ^{later} earlier. He was described by the police as being dressed in particular clothing and wearing a Ranger's scarf. This is clearly described by A p.205. Con Neill p.178 describes a scarf but does not specify the type. Con Warnock p.201 makes no reference to a scarf.

It is confirmed by Prunty's girlfriend that the boy in the back of the landrover who she saw was wearing a Ranger's scarf. Glen Mercer p.117 remembers him wearing a scarf. Lunt accepts in interview that he was wearing a Ranger's scarf. As I have stated earlier Mr Prunty's statement has been up until recently ^{seen} as referring to Lunt and in my opinion capable of supporting a charge of murder against him.

The importance of the scarf to Prunty's opinion is clear on reading his statement. p.14 " I saw another policeman grab hold of one of the fellas in the group that was kicking Robert Hamill. He was wearing a Ranger's scarf and he was took away and put in the back of the landrover." Later same page " After 5 or 10 minutes I saw the fella with the Rangers scarf being let out the back of the landrover." On the next page " What was distinctive about him is the scarf and how he was wearing it. The scarf was mostly blue with red and white bands running across it at intervals It was tight to his neck in like a knot." Prunty cannot now be shaken as to his assertion that the person he saw was Forbes. I have already commented on that. In addition however he has stated clearly and unequivocally that if asked if Lunt was the person he saw he would say no. He would also be saying no on the basis that on his account the persons face was not obscured, and he now says, he was close enough to hit him in the face.

Whilst accepting he was wearing the scarf and that he was in the back of the landrover Lunt has denied any participation in the incident. Having only the evidence of A there is no reasonable prospect of a conviction of Lunt for murder and in my view even affray might be difficult.

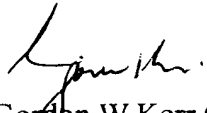
9. ROBINSON:

Witness A named Robinson as one of the people directly attacking Hamill.

Witness B saw him involved in a fist fight. On the basis of "A"'s evidence I would have advised a prosecution for murder. The evidence is no longer available In the absence of this evidence the statements against Robinson appear to be as follows; p.65 Wright, in crowd running about like a headless chicken, p.178 Con Neill taunting and trying to break through police, p.184 Con Atkinson having to strike him to keep him back,p.189/190 Con Silcock , being one of the crowd and shouting I hope they die, p. 194 Con Adams sighted but doing nothing,p198 Con Cooke trying to push past police.

The totality of the evidence therefore would lead to no offences of direct violence against the I.P.'s and at their height a charge such as affray.

10. On the present state of the evidence I can go no further in advices. If any extra matters come to light I shall of course be happy to discuss them and give any further advices required.


Gordon W Kerr Q.C.

