

IN THE CROWN COURT SITTING IN NORTHERN IRELAND

REGINA

-v-

JOHN MAIN AND COLIN HARBINSON

DEENY J

[1] The trial of these two accused commenced at Belfast Crown Court on 18 April 2007. Mr Ken McMahon QC appeared with Mr Gary McCrudden for the prosecution. Mr Frank O'Donoghue QC appeared with Mr Mark Farrell for John Main. Mr Charles Adair QC appeared with Mr Michael McComb for Colin Harbinson. Both accused were charged with attempted murder of unknown members of the security forces on 10 September 2005 in the County Court Division of Belfast. They were also charged in a series of other counts with which I will deal in a moment. The events arose out of a violent riot connected with the rerouting and subsequent police restraint of a parade in the Whiterock area of the city.

[2] At the commencement of the trial before me Mr O'Donoghue QC asked that his client be re-arraigned on Counts 2,3,5 and 7 on the Bill of Indictment. He then pleaded guilty to those counts of riot, possession of firearms with intent to endanger life, possession of a pipe bomb with intent and possession of devices for explosives with intent. In the light of that the prosecution asked that Counts 4,6 and 8 relating to him be left on the file but not to be proceeded with without the leave of this court or the Court of Appeal. Mr McMahon QC then commenced to open the case.

[3] After the luncheon interval on 18 April Mr Adair asked that Colin Harbinson be re-arraigned on Counts 2,3, 9 and 11. This was done and he then pleaded guilty to those counts relating to riot, possession of firearms with intent, possession of the component parts of a pipe bomb with intent and receiving instructions in the use of firearms. The prosecution then asked if Counts 4 and 10, which were again alternative counts, be left on the file not to be proceeded with without the necessary leave. The accused therefore were

accepting their role in the events of 10 September 2005 as alleged by the Crown, with prior instruction in firearms on the part of Harbinson. They continued to plead not guilty to Count 1 on the indictment, attempted murder. It was not disputed that they had both used a handgun to fire rounds from the gable wall of No. 84 West Circular Road in the general direction of two lines of police landrovers there assembled to keep order in the face of a large and unruly crowd. The only issue was whether the prosecution could prove, beyond reasonable doubt, that the intention of each accused, or either accused, in firing on that occasion was to murder unknown members of the security forces nearby.

[4] Mr McMahon completed his opening of the matter of which he had provided a written note. In the course of it he played a DVD of events on the evening of 10 September. This had been filmed from a camera in a security forces aircraft above. It clearly showed both accused, on the Crown case and on their own admissions now, moving around the alleyway which runs between West Circular Road and Highfield Drive. At one point at approximately 1654 on the day in question John Main lights the fuse of what is shown to be a pipe bomb and throws it at a vehicle occupied by Inspector Galbraith and other officers which had reversed up to the alleyway between 84 and 86 West Circular Road. Not content with that a few minutes later Main and then Harbinson are seen to fire at 1708 towards the police from the corner of No. 84. Examination of this video, as I shall call it for convenience, and stills taken from it was an important aspect of the trial.

[5] William Gorman was the first witness called. He was a civilian mapping officer and he had prepared Exhibit 21 sheets A and B. A was a location map of the general area in question. Exhibit 21B was a plan from above of No. 163 Highfield Drive and the garden thereof, on which stood a hut. That was then the home of the defendant Harbinson. The pipe bomb was found in this hut when searched by the police. Christopher Mourtray was someone who said his new job title was Crime Scene Surveyor on behalf of the police but who performed a similar function to Mr Gorman. He had prepared Exhibit 63A,B and C but C was no longer relevant. Exhibit 63A dealt on a scale of 1-500 with part of the West Circular Road. Exhibit 63B showed some elevations which he had been asked to prepare relating to 84 Highfield Drive. There was a small window in the gable wall of that dwelling house. The bottom of the windowsill was 1060 mm from the adjoining path and the top of the windowsill was 1110 mm in height from the path. The edge of the window nearest the West Circular Road was 460 mm from the corner wall. Mr Mourtray estimated that the distance from the corner of the gable wall to the centre of the road opposite No. 79 West Circular Road, which he believed was where the police line was 37.5 metres or 123 feet.

[6] Mr O'Donoghue did not cross-examine this witness but Mr Adair QC did. He said the marks and the elevations came from a still from the aerial

video recording which had red lines on it. This was later shown to the court. It is a photo of the gable wall with, we now know, the two defendants just before they fired. Mr Moutray said that he had not been asked to measure the difference in height from the firing point to the roadway but he agreed that that firing point was elevated from the roadway. He suggested it might be as much as 8 or 10 feet but Mr Adair said his evidence would be that it was 2.1 metres. It was, therefore, said the witness, significantly above the West Circular Road. His map does show steps up to some of the houses. In answer to myself he agreed there were no steps shown up to No. 84 but he believed they did exist. Mr Adair put to him that if he put his hands straight out at the gable wall, implicitly standing at his full height as Mr Adair was he would be pointing significantly above any person on the road. The witness said he would not necessarily hit anyone on the road if he was pointing straight and true but he had not been asked to attempt to assess this on the ground. Nor was he aware of any photographs to illustrate this or of any photographs of the view from the gable wall.

[7] He was then asked to see some photographs in an album entitled Exhibit D1 which were stills taken from the aerial video. He could not say whether the gun looked level with the windowsill. From photographs 4 and 5 of D1 the man looks as though he was below the level of the windowsill ie Mr Harbinson. He did not feel able to say that the weapon in Mr Harbinson's hand was pointing in the air even by 5 or 10 degrees although Mr Adair put it to him that it obviously was. He told me that the path beside the window is level. He did not know the heights of the police landrovers.

[8] The next witness was Mr John Galway, who is a photographic officer who on 2 December had gone to the scene and had taken views from behind the nearby Rangers Club and from 95 Highfield Drive but he had not been asked to take photographs from No. 84 West Circular Road nor was he aware of such photographs. Mr McMahan wished to edit the evidence of his next witness Inspector Galbraith in the light of the pleas that morning and the court then rose.

[9] As Mr McMahan pointed out the assessment of this photographic evidence is really a matter for the court. Photograph 1 of D1 appears to show the defendant Main hunkering down to some extent with his arm level with the bottom of the windowsill. I note that photograph 2 clearly shows that he is at the corner of the dwelling house firing at a relatively acute angle to the pillars outside the door of that dwelling house. That to me conveys that he was pointing the gun down to the police who were about 40 yards away. (Police vehicles in front of the line would obviously be nearer). His hunkering down would point to him aiming at the police as would the direction of his fire. It might be said that the hunkering down of course made him a smaller target. From the DVD one can see him manoeuvring a refuse bin and a child's slide both of which provide visual cover, if not protection, to

the gunman. Photograph 3 does give something of an impression, although not by any means a definitive one, that Harbinson might have been pointing the gun slightly upwards. The same might be true of photograph 4. The same might be true of photograph 5 but the gun is there obscured by the time line on the film as is photograph 6. In Harbinson's favour it does seem to me that he is firing from slightly further back than Main was. One could not be dogmatic about it but Main's head seems to be about nine inches past the end of the windowsill whereas Harbinson's might be about six inches behind the end of the windowsill. One would infer from comparing P2 of D1 with the subsequent photos that Main was more intent in getting forward to get sight of a target when he was shooting. The only target, of course, was the security forces and their vehicles. Subsequently, Mr Brian Murphy for Harbinson, was of the opinion that his client's head never passed the drainpipe visible on the D1 photograph, well behind Mains' position.

Thursday 19 April

[10] Sean Hennessy was a photographic officer who went to 163 Highland Drive on 11 September 2005 and took the photographs to be found in the album Exhibit 20. This was the home of Harbinson.

[11] Inspector Andrew Galbraith is a long serving police officer with some ten years experience as an inspector in the Tactical Support Group. He commanded a unit of that group on 10 September 2005. The Whiterock parade, normally held on the last Saturday in June, had been significantly restricted in its route by the Parades Commission. The organisers subsequently notified the authorities that because of this they would seek to hold a parade on Saturday 10 September. The organisers were members of the Orange Order. Again restrictions were imposed, in particular that a short section of about 100 metres on the Springfield Road would be excluded from the route by the parade being diverted through the Mackies complex off the Springfield Road and back on to it further along. Inspector Galbraith said that the police anticipated that there might be violence as a result of re-routing the parade. Approximately ten Tactical Support Groups were deployed of approximately thirty police each in addition to local police and military support.

[12] On the day in question he had his unit at the Woodvale Avenue entrance to Mackies through which the parade was meant to go. It was coming from the Lower Shankill. He briefed his own officers at about 1345 having met with his superiors. Radio transmission suggested that the organisers were losing control of events and that Loyalist paramilitaries were taking over the parade.

[13] At 1524 pm on that day he and Sergeant Shanks advanced to the gate to address the arriving marchers but were subject to verbal abuse. Persons

were drinking alcohol, contrary to the permission for the parade. Nevertheless the front part of the parade including some five bands passed through the gate into Mackies. As well as the large parade there were several thousands of other people following or watching it. When the inspector tried to stop women giving alcohol to the marchers they were attacked by individuals and kicked and jostled by Orangemen and by supporters, said the inspector. The Orangemen were identifiable by their sashes. As briefed, his officers came to his assistance and closed the gates with some difficulty. They were subjected to bottles and missiles of various kinds at this time. Subsequently after negotiations with local representatives he was assured that the rest of the parade would pass through the gate peacefully and the gate was re-opened to allow that to be done. The parade had passed this point by 1559. He realised that there was serious disorder in the Highfield area which can be seen from the Mackies complex. He could see smoke from Springfield Road and he received a report that the military there were taking casualties. He consulted a superintendent and redeployed his unit through Millennium Way in their vehicles arriving at the bottom of the West Circular Road at approximately 1614 pm. In accordance with normal public order practice his men deployed on foot with the drivers in the vehicles behind them. Some police were already on the West Circular Road with a water cannon and he formed a line on their left. As they moved up the West Circular Road in the Highfield estate they were subjected to a barrage of stones, bottles and petrol bombs.

[14] He was asked to describe his mode of dress on this occasion. He wore a ballistic flak jacket which was designed to give some protection from weapon rounds. He had a helmet which was not intended to give such protection. In addition he had riot pads over various parts of his body including the upper thigh and lower legs and wore steel capped boots designed for riot situations. He also had gloves and a face mask which were flame retardant. Two types of shields are available to officers in this situation. He had a lighter round one about 3 feet in diameter. Other police had large shields of some 4 feet 6 inches in height which could interlink to make what he called an armadillo. Neither of these shields would have any ballistic protection.

[15] On the West Circular Road there was a massive crowd. Estimates of the crowd varied considerably but there were some hundreds of persons. Inspector Galbraith deployed on foot with his men, and with his vehicles behind him. He saw a civilian vehicle on fire on the West Circular Road but was also conscious of military vehicles on fire on the adjoining Springfield Parade. At 1620 two blast bomb devices exploded at police lines which at the time were close to Springfield Parades. This was in his experience not a natural progression in a riot situation which tended to escalate after abuse to stones, missiles, bottles and petrol bombs. However this situation became completely different with these explosive devices. On his right he saw an

officer injured to whom he sent first aid. He was near a water canon deployed with police. Authority was given for the use of AEPs, the i.e. Attenuated Energy Projectiles which are the modern version of what were known as baton rounds. These were discharged in aimed shots at the rioters who were moving back and forward in front of the police. The water canon was also being used. Much masonry was being thrown at police and he noted a wall nearby which appeared to have been demolished to supply material for this purpose.

[16] At 16.36 whilst still on foot he came under automatic gunfire from his left in the Highfield Estate. That would be the general area from which the two accused were later to fire at the police. They appeared to be low velocity rounds which struck the water canon and the road directly in front of him – perhaps as close as several feet away. Indeed he himself was struck on the left shin, he thought by two rounds. In the event it seems likely that they were ricochets as he was only bruised when he had an opportunity to examine himself. Immediately the gunfire occurred he ordered his unit to go to “hard cover” i.e. into the vehicles which were brought forward by the drivers. At 16.39 there was a further blast bomb beside his vehicle which was on the left hand side of the frontline of police land rovers. Evidence was later given of the robust armoured construction of these vehicles which clearly served the police well on the day in question. The vehicles have windscreen and front driver and passenger windows, although in this case with armoured glass and other protection. Likewise there is a smallish protected window in one of the rear doors. However in addition the vehicles have gun portholes. There are two in either side of the vehicle and one at the rear. They allow officers within to fire AEPs or presumably, other weapons if justified. Of course they also admit of the ingress of rounds when they are open. Rather like a man of war of Nelson’s time this in effect means that the land rover has to turn side on to the rioting crowd to discharge its modest broadside of AEPs. Inspector Galbraith pushed on past Springfield Parade with his unit in their land rovers. He noted two light military vehicles on fire as he passed that side road with masonry and glass around them. A soft drinks lorry had been used to provide bottles for the rioters on the West Circular Road. As he advanced up the West Circular Road he was in effect stopped by the presence on the road of iron railings which had been cut from the entrance of the nearby Paisley Park Bowling Green. Indeed he could see someone with an angle grinder in action at this time. A pole was cut down across the road. At 16.40 there was a further blast bomb at his passenger door. His window, as he was the passenger, was fragmenting from the various attacks upon it, despite the fact that there was both armoured glass and a protective surface. The inside layer of glass was fragmenting and striking his face. It was apparent to him, although not an expert, that the glass was weakened. He heard more automatic fire as it appeared to him. He could not say if any officers were on the ground but his own crew were inside his vehicle. Petrol bombs, bricks and stones were continuing with AEPs being

used to keep the crowd back. At 1648 there were more shots at his vehicle and subsequently more blast bombs and more shots. A Metro motor car was on fire and pushed into the police lines crashing into a land rover. Throughout this the inspector was pushing his way up the hill. He was leading his unit with what could only be described as gallantry. He reversed to the end of an alleyway which ran between Nos. 84 and 86 West Circular Road with his left side facing up the hill to keep the rioters at bay with AEPs. While there, at 1655 the rear of his vehicle was hit by a blast bomb. Those inside were shaken with the shockwave. He later learnt that the vehicle had withstood the blast save that the rear tyre had been deflated. He noticed slightly up the road at Highgate a gunman in the crowd with a distinctive orange hat. He had a long barrelled weapon with him.

[17] After several minutes with serious incidents continuing he noticed the list on his vehicle from the burst tyre. There were further shots at this time from the Highfield Area which was then to his rear. He moved slightly forward after the blast bomb. He thought he might be the vehicle visible in Exhibit 65, a still, at 17.09. However Sergeant Milliken believed that he had moved off earlier than that. Understandably the log of times was not able to record accurately every movement. In any event he did move off down the Springfield Road at about 5.00 pm and returned to a police station where his wheel was replaced. He then, with commendable fortitude and devotion to duty, returned to the West Circular Road at 17.50. A severely wounded civilian was being treated on the road. Ambulances could not make their way there. The police gave first aid. The violence ceased whilst this happening. This suggests a degree of control and deliberation on the part of prominent persons among the rioters. The casualty was removed and the violence immediately restarted with more petrol bombs and blast bombs. At 18.10 there were a further six shots fired followed by more gun attacks. At 18.20 a gunman was reported between 84 and 86 West Circular Road. At 18.23 he and others were fired on by this gunman and rightly conscious of the vulnerability of his own damaged vehicle he returned fire with his personal protection weapon in self-defence with his colleagues behind him firing from the porthole. However there is no evidence that this gunman was either of the accused and I need not spend longer on this incident. At one point about then he had to get out of his vehicle and speak to military because of difficulty in making radio contact with them. At another point he had been out of his vehicle because when officers hurriedly remounted after the start of violence there was not room for everybody in his particular land rover. At or about 1905 he called on the military to use a particular vehicle they had for clearing the roads. They went forward and succeeded in doing so with the police coming along behind and the riot was effectively dispersed. The inspector at 2105 carried on a search of 149 Highfield Drive, the home of John Main. There bags containing firearms and bomb-making equipment were found. He was still on duty in the early hours of the morning when he returned to Highfield Drive at about 1.40 am. A scarf, baseball cap and other items were

found behind 141 Highfield Drive. Large numbers of petrol bombs and petrol containers were found, some in milk crates. Bullets and spent cases were found in and around 82 West Circular Road. He concluded his duty at 4.00 am on the morning of the 11th.

[18] He was asked for the height of his vehicle and having measured it during an interval in giving evidence said it was 7 feet 3 inches high, 2.3 metres. He described these vehicles which were in use on this day. They have a standard Land Rover, chassis and engine but they are then provided with armour steel plating and armoured glass. Furthermore on most parts of the vehicle there is either an aluminium sheet or a macrilan sheet in addition to "protect" the expensive armour-cladding.

[19] Although a significant part of the evidence addressed these issues it seems to me they can be dealt with fairly shortly. In the events as they unfolded the Crown were unable to show that the firing by the two defendants, which was at 17.08 British Summer Time, did cause either the hole in the rear of the vehicle of acting Sergeant Milliken or the holes in the sheeting on the side of her vehicle. I am inclined to the view that Sergeant Milliken may have been wrong in thinking that she was back in the police line facing up the hill when the back of her vehicle was struck by gunfire. On the evidence it seems more likely that she was one of two vehicles seen ahead of the police line on the video at 17.10. However it is quite clear that this is not something on which one could reach a decisive conclusion adverse to the defendants and I do not do so. It is not necessary therefore to go into these various strike marks in detail in this judgment.

[20] The other aspect of this matter was the stress placed by the defence on the considerable defensive qualities of these vehicles. This was a significant part of the cross-examination of Inspector Galbraith by Mr O'Donoghue, which now followed. I do not propose however to go into this in detail.

[21] The estimate of the number of shots seems to have been formed by Constable Bell. The inspector accepted that after the initial deployment on foot the officers were almost always in the protected vehicles save in the circumstances already briefly mentioned. Constable John Bell had died since he had made statements. Mr McMahan applied under Article 20 of the Criminal Justice Evidence Order 2004 to read his statements. As he complied with the statutory requirements in that the material in the statements was admissible, the witness was identified and he could not attend because of his death I granted that application. There were no submissions opposing it from the defence. He read the statements which described what can properly be described as a murderous onslaught on the police of missiles, petrol bombs, blast bombs and gunfire on 10 September. This officer was involved in the find of the very important cache of arms hidden by the defendant Main. That cache of arms may be relevant to his intent when he was actually firing,

especially if it transpires that some of those weapons had been fired either that day or at all ie. that he was participating in an onslaught on the police which involved the firing of many rounds.

[22] Sergeant Karen Belinda Milliken was an acting sergeant in the PSNI on 10 September 2005 and part of No. 6 Tactical Support Unit, Codename Scarlet, which was commanded by Inspector Galbraith. In her vehicle was Constable Hanna as the driver, Constable Hamilton and Reserve Constables Kane and Gribben. She was a witness to the abuse given to Inspector Galbraith at the Mackies plant in the middle afternoon. At 1613 her unit deployed at West Circular Road. Her vehicle was Scarlet six but there were only five Scarlet vehicles present that day. They deployed on foot initially as Galbraith had told them they were forming a shield line to support other police already there. There were at least 400-500 rioters facing them on the WCR. She herself is not familiar with this area and found it difficult to locate precise locations on a map. To quote her: "At first there were just petrol bombs, bottles and stones thrown at the police." This is an example of the fortitude of the sergeant and her colleagues, in particular Inspector Galbraith on this occasion in the high degree of professionalism and courage shown in an exceptionally difficult situation. Their restraint in the circumstances was quite extraordinary. She saw two police officers hit by explosive devices. AEP rounds were fired by the police. At 1636 she was conscious of automatic gunfire from the Highfield Drive side of WCR and Inspector Galbraith thought he was hit in the leg but not injured. She heard the shots herself and heard strikes marks on the road in front of her. They were told to take hard cover going to the rear of and into the police vehicles. Blast bombs followed with masonry, petrol bombs and gunfire. Scarlet one was hit with a blast bomb which punctured the tyre. There were more shots at 16.48 about 14 in number. At 16.52 a burning Metro motor car was pushed by the crowd into the police line and collided with Scarlet four. She was aware of gunshots striking the vehicles as were blast bombs. Scarlet one (Mr Galbraith) reported a gunman with an orange hat in the crowd. That vehicle pulled back to repair its damage. She and her driver observed two males pull a child's orange slide at a house on the lefthand side of the WCR. A wheelie bin was placed beside it. There were other signs of activity. She wondered at the purpose of these preparations. She was facing up the road at this time. At or about 1658 a parade from the Ballygomartin Road (as identified in Constable Bell's statement) passed through the rioters who marshalled to let it pass. It also passed peacefully through the police lines but immediately afterwards the rioting started again. At 1700 according to Sergeant Milliken six shots struck her vehicle which was in the frontline of police vehicles.

[23] At 1703 she observed a cameraman, who she believed was a press cameraman being attacked by six males when he ventured near Paisley Park. She moved vehicles up and he took the opportunity to get up and run away with a large head wound. Constable Hamilton demonstrated his AAP device

through the porthole. It was hit by a man with a shovel jolting the constable. A male person approached the vehicle and actually placed a pipe bomb on the windscreen grille right in front of her. He pushed it in but it failed to explode and fell off.

[24] At 1708 she was still in the frontline of landrovers having returned from the sortie to Paisley Park and being presented with a crowd surging forward with petrol bombs, blast bombs and other missiles. Her vehicle was struck by two shots to the rear of the vehicle. She heard them strike. It is a little surprising they were at the rear of the vehicle. It may be that she had not retreated as far back as No. 84 from Paisley Park. However this is a point which I have resolved in favour of the defendants. The rear of her vehicle could not have been hit from their firing point at 17.08 if she was facing up the hill below them as she said.

[25] At 17.21 there were 34 more shots fired at police from an alley on the lefthand side of the road, in three separate bursts. More shots were fired at 17.28 with a large bomb thrown behind another vehicle. There were more shots at 17.35 with two rounds striking Scarlet three in the front of the vehicle. There were further shots at 1739 and a continued fusillade of missiles over the following period. Her driver was keeping a log but she was also attempting to keep salient facts by noting them down in her notebook. At or about 1750 she became aware of a seriously injured civilian. While first aid was given to him members of the Scarlet Unit deployed on foot. Some of them were armed with MP5s to cover the crowd but in fact the rioting ceased while the injured man was treated. (There is a suggestion that he had been a rioter himself). No less than 40 field dressings were applied to him before he was taken off in the police vehicle. As soon as that happened and while police officers were still trying to find vehicles for themselves, including the extra men from Scarlet four the rioting started again, nearly instantly. There were 82 shots fired at police between 18.10 and 18.22 and a water canon was rammed. There were four more shots and two petrol bombs at 1823 and a dozen petrol bombs at 1833 and at 1838. She herself saw two males throwing petrol bombs which may have been from No. 82 WCR which was identified on the RT as a scene of this activity. At or about this time they were directed to clear away what they could to let an army vehicle through. This happened and by 1912 the West Circular Road was clear and the water canon had got into Highfield Drive which was identified as the source of many of these attacks.

[26] At 19.16 she moved up on the left of Scarlet One because of concern expressed that it was vulnerable to penetration owing to damage to its nearside passenger window. Rioters were engaged at this time with AEP rounds. The unit withdrew at 19.23. She described finding the bullet holes on her vehicle when she examined it a New Barnsley police station later on the same evening. She was cross examined by Mr Farrell, junior counsel for John Main. Officers had been briefed to expect trouble but she said that no

two parades were the same. Intelligence indicated that the UDA would be likely to block roads and that the UVF had already brought guns into the area. She had similar public order protection to Inspector Galbraith. She was not sure exactly where she was at 1630 when the firing was started. She had never been in a riot before where she was fired on. (She had been serving in this unit for nearly 10 years). Her vehicle was struck at 1700 hours by six rounds and 1708 at two more rounds. She heard them strike the rear of the vehicle. She would not forget this incident as she thought she was going to die. She did not subsequently note six strike marks on her vehicle but two on the left hand side and one on the rear. I observed that examination of the panels showed some other impact damage on the panels of the vehicle although the precise cause of those could not be established by the witnesses concerned. In answer to counsel she could not say whether the shots were low or high velocity. Nor how close together they were save it was at most seconds. The impression it caused on her was to make her feel like a fish in a barrel. Her colleagues in the vehicle were swearing and upset as they came under fire. The doors were closed. Her vehicle was stationary at 1708. She agreed with counsel that the porthole was a potential weak spot in the protection of the vehicle. It had been open at approximately 1703 on the left hand side of the vehicle. She would not necessarily know when it was open as she was in the front of the vehicle. Her colleague does not need an order from her to open the porthole and use his AEP launcher as a general authority had been given earlier although she would normally hear the discharge of the weapon and would record it.

[27] She was cross examined by Mr Adair QC for Harbinson. He established that her timings after 1708 were not actually written in the Land Rover or by her. She was on duty until 4.00 in the morning and on duty again from 10.00 am to 3.00 am the following day and again on 7.00 am the following day after that and she could not recall exactly when she made all the notes. She believed she had the assistance of Constable Bell's log and her own recollection. It does not seem to me however that anything turned on that in the events that have occurred. In re-examination she said, as indicated above, that she had been with Tactical Support Groups from 1996. That included a succession of summers connected with the Drumcree dispute at Portadown. As to her location she said in answer to me that at the time that that's where she believed she was at the time the vehicle was struck. It was right to say that she could not see the shots striking the rear of the vehicle but believed that's where they had struck.

[28] By consent prosecuting counsel read the statements of her three crew members. Constable Hanna had registered what he believed was automatic gun fire and blast bombs coming from the alleyway with the orange slide i.e. between 84 and 86 West Circular Road. At one point a male had actually placed a blast bomb on the bonnet of their car at the windscreen but it fell off without exploding. He too registered gun fire striking the vehicle both at

1700 and at 1708. He does not mention where the vehicle was struck but his colleague, Reserve Constable David Gribben, in his statement said that the two shots at 1708 struck the rear of the vehicle. He would have been in the rear of the vehicle at that time.

[29] Mr Stephen Britain is a Crime Scene Investigator with the Belfast PSNI. He visited 149 Highfield Drive at 2300 hours on 10 September and took photographs, exhibit 5 of the items that were found. These included no less than 7 handguns. These were examined by Mr Leo Rossi an experienced Forensic Scientist. He recorded one live round found in the shed of 163 Highfield Drive (the home of Mr Harbinson). No less than seven handguns were found at Mr Main's home, 149 Highfield Drive as well as other ordinance. SB2 was a Walther pistol and magazine which had been fired. SB3 was a Star pistol which had been fired. SB4 was a Smith and Wesson .38 revolver which had been fired. There were six cartridge cases in that revolver showing that six rounds had been fired. They had not been removed thereafter nor the weapon obviously cleaned from which one might draw the inference that it had been recently fired. SB5 and 6 were replica Valtro pistols designed to fire blanks. However these had been modified by replacing their blocked barrels with improvised barrels which would allow them to fire live rounds. On testing live rounds were successfully fired. SB7 was a First World War pistol with a broken magazine. SB8 was a third Valtro pistol which had been modified to enable it to fire live rounds. PEM40 was a round that could have been fired from the .38 but he was not asked to check this. Other bullets that were found could have been discharged from that weapon. Two 9mm cases found in the alley of No. 84 could have been from a Valtro pistol. There were more rounds for the .38 and shotgun cartridges and no less than 104 .45 pistol cartridges in good condition found in a white sock and suitable for use either in a pistol of .45 calibre or a sub-machine gun. Another white sock contained 97 9mm cartridges. SB21A was a further sock containing 111 9 mm cartridges. SB22 was a sock containing 38 9 mm cartridges and SB26 was a magazine for the replica pistols. The conversion of these replicas into firearms firing live rounds required both knowledge and skill.

[30] Item 45/DPI was six spent .38 cases (9mm K) which had been found at 84 West Circular Road the firing point of the accused. Interestingly and unusually, as Mr Rossi put it there was evidence that the wrong round had been fed in the Walther pistol followed by a correct round and leading to a bulging of the barrel of that weapon when the second and correct round was fired.

[31] In cross-examination by Mr O'Donoghue Mr Rossi conceded that some of his conclusions had hardened between his first report and second report. He was cross-examined about the cases and damaged rounds and the weapons and he identified some of them as weapons from which the rounds

were possibly discharged. He accepted that these weapons were low velocity weapons discharging rounds at under 1,100 feet per second. At short range they could penetrate aluminium alloy depending on its thickness while macrilan sheeting would generally defeat rounds from such weapons. He discussed the damage to the vehicles. Given the Crown evidence that Sergeant Milliken's vehicle was back in the police line at 17.08 and the Crown's concession that could not be satisfied that the accused had hit her vehicle it does not seem to be necessary to go into the issue of the strike marks on this vehicle any further. Some of them could have been caused by the weapons subsequently found at the home of the defendant Main.

[32] The Crown proved that the video evidence, as I have called it, was taken from the Air Support Unit aircraft of the PSNI. I read the statement of Constable Geoffrey Bell who had encountered the civilian who had been shot in the back of the neck, fortunately without grave consequences, surprising although that may seem. Detective Constable John Duffy gave evidence of identifying John Main in police custody from having viewed the video cassettes taken from the plane. Detective Constable Denis Burns recorded Main's admission that he had lived at 149 Highfield Drive but that he otherwise denied allegations in the course of an interview on 15 September at Antrim. However when the video was played to him he did identify himself as one of three males on JD4. I am satisfied that in the light of all the evidence that he was the first of the two males seen at No. 84 West Circular Road firing at 17.08 and involved in the other incidents to which I shall refer. Counsel for Mr Harbinson expressly acknowledged that he was the second man with the hood in the video evidence. Counsel for Main then accepted that he was the first man firing from the corner of No. 84 at 17.08. Detective Constable Burns continued his evidence about the interview. He put to Main that he was the person assisting with the long barrelled weapon. He accepted that he knew Colin Harbinson who lived at 163 Highfield Drive. Given the subsequent pleas a number of his answers to the police were clearly untruthful. It emerged in the course of the interviews that Main had thought that a man whom he knew all his life had been injured by plastic bullets. However this appears to have taken place after 17.08 and I have concluded it does not provide a motive for the intention to commit murder at that time ie. the erroneous belief that his friend was shot by the police. In fact he had been injured by a blast bomb from one of the rioters. The accused was interviewed about his association with the UDA whose badge he had tattooed on his right arm. He had a UDA uniform in his house which he said belonged to his father but a further uniform was found in a bedroom. He was not charged with membership of this proscribed organisation, nor holding himself out to be a member of it, nevertheless. He admitted that the rerouting of the parade had annoyed him. He admitted that he was sympathetic to the UDA, but denied membership of it. He admitted that it was him in still photograph JD5. It was clear from the videos that he was going to some length to avoid being identified, even from above, by wearing a cap and scarf on this late

summer afternoon. He untruthfully denied that he was the person who had thrown the blast bomb. He denied various things which have now been shown to be the truth. The video was shown to him which was also shown to me of a man with a rifle or long arm of some sort, with another person. He appears to be having some difficulty in making the weapon operate. Main is clearly visible eagerly trying to assist him when the gun had apparently jammed. He admitted that it was clearly him later at 19.10 coming out of a house having changed his clothes and discarded the hat and scarf. He agrees it is him in JD3. When the arms find at his home was put to him he claimed never to have seen it before. Counsel for Main did not cross-examine the police officer about his allegation that it was Main who was handling the rifle on the video.

[33] The court heard evidence from a Mr Brian Martin who worked for the Motor Transport Unit of the PSNI at Seapark. For the reasons before mentioned it seems to me that this evidence is not going to assist in arriving at a conclusion here, in the events that transpired. Mr McMahon asked the court to view further portions of the video evidence. That at 17.35 (BST) indisputably shows Main as helping with and at one point carrying the long weapon which was either a rifle or machine gun. He is clearly identifiable at other times playing an active and indeed prominent role in the orchestration of attacks upon the police. It is right to acknowledge the very skilful use of the camera by the operator from the aircraft in what must have been difficult circumstances. As pointed out above Main admitted himself that he was at 84 West Circular Road, by his plea, firing and throwing the blast bomb and that he is visible at other points in the video such as JD 3 and 4.

[34] Evidence was called with regard to the interviews of Colin Harbinson. I note that when he was interviewed not only was his solicitor present but his mother was present as an appropriate adult. I bear that in mind when coming to Mr McComb's cross-examination of Detective Constable Kitchen subsequently. Harbinson denied involvement initially on 11 September and continued to deny involvement until 12.44 on 12 September. It will be recalled that a bag was found in his shed. He admitted that it had been left with him about a month and a half before these events. He cleaned the guns as he was instructed to do. He had been taught how to load them and he did load them. He told the police that he wanted to move house in an effort to get away from the persons who had left the guns with him but his wife did not want to move. He had loaded three weapons. Not only that but he brought them to the entry on the day in question and met other hooded "boys". He had been involved in the movement of three other weapons. He knew the men involved were paramilitaries. They had told him how to make a pipe bomb. He claimed that they had masks on every time he saw them. With regard to one gun the magazine was broken and he could not get it out. He had put bullets in other magazines and in the guns. He used gloves to keep his fingerprints off the guns. He had handed over the guns beside the

Rangers Club off the West Circular Road. He handed back the gun that he himself had at the conclusion of the events.

[35] Inspector Galbraith was recalled with regard to his location at the time of the firing by the accused. I am inclined to think that he is not correct in saying that his was the only vehicle exposed so far forward. I was left with the strong impression that he and Sergeant Milliken were not shown all the video evidence before the trial that subsequently emerged in the course of the trial sometimes at the request of the court. It may be that if they had been a clearer picture would have emerged. But it is clear that I can form no safe and firm conclusion that the two accused hit either his vehicle or Sergeant Milliken's at 17.08 or otherwise.

[36] The evidence which Detective Constable Kitchen resumed with regard to Harbinson, at page 409 of the notes, records the admission of Harbinson that he had showered on the evening of 10 September because he would have had evidence on him from handling the guns. His clothes were washed as well. He is the person in the cream coloured coat with a hood visible in the video. He did not claim that he was acting under duress (page 436). There is a further interview with him on 11 January 2006 where again a responsible adult in the form of Isobel Harbinson was present. He admitted that he had not told the whole truth on the previous occasion. He admitted that he was given a gun on 10 September. He refused to throw a pipe bomb although one is left with the impression that was because of a desire for self-preservation rather than for any other reason. He was with another man in the alley of 84/86 West Circular Road. The other man fired first and then he fired also. Clearly the other man was Main, although Harbinson did not say this. He said he only saw the one police landrover. He was kneeling down pointing over the bin in front of him. The officer put to him that he was taking aim but he said: "I just reached out and fired the gun". He claimed that he had just shot over the top of the landrover. He did not point the gun at the landrover and did not try to hit anybody or anything. He just pressed the trigger of the weapon until it stopped and it had emptied. There might have been eight shots. The officer put to him that he had demonstrated doing this with his arms straight out in front him. The notes at page 462 record the accused as follows: "No if I wanted to do, if I wanted to shoot (sic) at police at the time I would have pointed down the way because the landrover was down from me". He admitted that he knew enough about forensic evidence to have ditched his coat and training shoes and washed his clothes and showered.

[37] He was asked at page 509 what he was shooting at and he said: "I fired it, I fired it up in the air". The officer points out that it does not look to him that he was firing the gun in the air, but Harbinson repeated that that was what he was doing. He claimed that he "didn't want to hit nobody". At the conclusion of that interview he claimed that the landrover was "near disappeared when I started shooting". I observe that that might be right and

that his shots or Mains' or some of them went into the rear of the landrover but again that is not something about which I can now be satisfied. Consistent with that case he was later to claim that he had just seen the closed back doors of the landrover.

[38] Detective Constable Kitchen was cross-examined by Mr Michael McComb on behalf of Mr Harbinson. He established that he had no previous convictions of any kind nor had he been previously charged with any terrorist offence and the constable felt he had been used but willingly used by others. In cross-examination the Detective Constable pointed out that the accused had been actively involved in these matters from start to finish as he put it. He was shown two letters of 29 July and 8 August 2005 showing that the accused was seeking to put his house on the market. Mr McMahon did not object to those going in evidence as indicative of the accused's thinking at that time. The Detective Constable accepted that Harbinson was not orchestrating events from what one could see on the video but was a follower. While he was polite and well mannered in interview the officers view from seeing the videos a number of times was that the accused was aiming at police in the landrovers and was not shooting in the air as he claimed. Of course, as was acknowledged by counsel, it is a matter for the court on assessing the videos. The witness pointed out that the accused was adopting a stance that he himself had been trained to use with one hand holding the gun and one hand steadying it. He could not say that D5 or D6 showed the gun as elevated when fired. Harbinson had demonstrated what he had done, in the later interview by standing up and putting his right arm straight out in front of him. The prosecution then concluded with the tendering of another witness who was not required.

Application for direction of no case to answer

[39] Mr O'Donoghue QC submitted at the end of the Crown case that his client had no case to answer on the remaining count of attempted murder. Counsel for Harbinson subsequently made a similar application. Counsel furnished helpful oral and written submissions. The application was made under the second limb of the test in Galbraith [1981] 1 WLR 1039; 73 CAR 124. It was their contention that I should conclude that the prosecution evidence, taken at its highest, was not such that the court, as the tribunal of fact, could properly convict Main of acting with the specific intent to kill which is required for attempted murder: Whybrow (1951) 35 CAR 141. He suggested that while there was some evidence it was so tenuous and weak that the court could not be satisfied there was such an intention to kill. I need not set out his helpful arguments in full which were before me when forming a conclusion. I was satisfied that the Crown did indeed have a case on attempted murder at the conclusion of the Crown case upon which a jury or judge sitting alone could properly convict and I refused the application. I came to a similar conclusion in regard to the defendant Colin Harbinson. The reasons for that

decision will be apparent from the subsequent paragraphs of this judgment. Counsel's submissions on this topic were relied on by them subsequently at the conclusion of the case after I rejected their applications.

[40] On Wednesday 2 May 2007 I called on each of the accused in turn to give evidence in the manner required by statute but both in turn through their junior counsel chose not to give evidence. No evidence was called for Main. On 3 May Mr McComb for Colin Harbinson called Mr Brian Murphy, consulting engineer. He had taken an album of photographs with regard to the video photographs of his client. He was of the opinion that they appeared to show him pointing upwards when firing the gun but that he could not reach a scientific opinion on the point. By asking a colleague to assume the position Mr Harbinson had assumed he formed the view that the gun was one metre above the ground beside No. 84 West Circular Road. By his calculations one would need to add another 1.103 metres to get the difference in level with the central line in the roadway in front ie. 2.103 metres. As the position of the landrovers at the time of shooting was unclear he had taken the effect of difference in height over different distances. Even an inclination upwards of the firearm by the gunman of 5 degrees would make a difference which would double in height over 24 metres. His client can be seen to be crouching indeed on his knees thereby reducing his height, it was true but being nevertheless one metre above the footpath. The landrovers themselves were approximately 2.1 metres in height at the top. A level shot over 24 metres would therefore hit the top of the landrover. A slight downward angle of only 5 degrees would mean that a round would nearly hit the kerb. Equally therefore a 5 degree angle above the level when firing would carry the shot comfortably over the vehicle. I have to observe that the engineer's photographs do show that there was a block of three storey flats opposite the firing point which would have been the backdrop for these very shots that these men were firing. It shows, at the least, the grossest indifference to the risk of injury to any civilian who happened to be at the window of those apartments directly opposite this firing.

[41] In answer to questions from the court about the relevant positions of Main and Harbinson, particularly taken from the video stills D1 to D6 the witness said that it was clear that Harbinson had never gone forward of the white drainpipe clearly visible just in front of the small window on the side of No. 84. Main on the other hand moves between D1 and D2 somewhat forward of that position and thereby gives himself a better field of fire at the police lines, or so it appears to me on reviewing the witness's evidence and the photographic material.

John Main

[42] I now turn to consider whether the Crown have proved beyond reasonable doubt that John Main on the date in question was firing at police

with the intention of killing one or more unknown members of the security forces. In so doing I will revert back to some degree to the submissions of counsel at the close of the prosecution case adopted by them at the conclusion of the case overall. Counsel for Main contended that on the Crown case I could not be satisfied that such an intention had been proved. They properly acknowledged four points on behalf of their clients in their written and oral submissions one of which must be qualified as it was qualified by them in argument.

(i) John Main fired a firearm (pistol or revolver) at 17.08 from 84 West Circular Road.

(ii) He discharged a number of bullets from the firearm. I observe that this is clear from the video and the visible recoils and I am satisfied on all the evidence that he fired approximately six shots on this occasion.

(iii) A police landrover was hit at the rear at 17.08. While this point was made in the written skeleton argument I reiterate that the Crown admit that I cannot be satisfied that any round from either Main or Harbinson did in fact hit an identified police landrover at that time and I therefore disregard that point, or rather, recast it as an acknowledgement that it was shown to the satisfaction of the court in the way that it must be that Main was firing at police landrovers in front of him.

(iv) There were police officers inside the landrovers.

Counsel then went on to elaborate the various intentions which might have been in the mind of Main at this time ie. to kill or to injure or to cause fear or to cause damage to property. I was reminded that he had pleaded guilty to possession of a firearm with intent to endanger life, a proper acknowledgment that it was beyond doubt he was so doing. But, counsel contended that there was not enough there to properly infer an intention to kill.

[43] I will deal with one point at this stage which figured more prominently in the early stages of the trial than at the conclusion. It emerged in evidence at the trial that these police landrovers used by the officers on the day in question had a very high level of protection for the officers inside. They were largely built of steel armour cladding with some additional macrilan or aluminium. The armour cladding would resist any round fired by these side armours used by either of the two defendants. Where appropriate there was armoured glass. However counsel properly acknowledged that impossibility did not prevent a conviction on a charge of attempted murder. Of more practical importance is the fact that the vehicles had portholes which opened from time to time to allow officers to fire or consider firing AEPs, but also allowing a round to enter. Furthermore several of the vehicles had been

under sustained attack from firearms and blast bombs and had sustained damage eg. to the Inspector's window, making them vulnerable to gunfire. Furthermore although the officers after the initial gunfire understandably remained within the vehicles, from time to time it was necessary for police to deploy out of the vehicles and they did so. Perhaps of most importance is the fact that the court was certainly unaware of the extent of protection on these vehicles until the evidence was given, as was at least one witness who was asked about this in the course of the trial. There was no evidence before me that the accused knew that these vehicles were going to be largely immune from pistol fire. I think it would be quite wrong to infer that they did know that and I do not do so. A shot hitting the land rover body would not have killed an occupant but a round entering a porthole or damaged window could well have done so. It is relevant to acknowledge that the Crown have not proven that there were any police officers on the ground at 17.08 and I take into account that Main and indeed Harbinson were firing at the police in landrovers at the time in question, but also take into account the other matters to which I have referred and will refer.

[44] It seems to me that the evidence against Main goes well beyond what his counsel has acknowledged. Without giving equal weight to these other factors I set them out as relevant. He can be seen using two hands to take aimed shots at the time in question, one hand being used to steady the other hand, in a way a police officer described as the way in which he had been trained to fire. Not only that, but as I point out in par.42 above he moves forward to get a better shot at the police. While the firing was not point blank range the police were at most 40 metres away from him at the time he fired. A black and white video still marked 17.10.25 ie just after the firing in question shows there two vehicles nearer to No. 84 than the main police line as does a further exhibit timed at 17.09 which shows one police vehicle. Taking all the evidence of the movements of the police vehicles involved I am satisfied that at least one police vehicle was forward of the main police line at 17.08. I do not know that this is very material but it means that the accused were firing at vehicles 20-40 metres away from them. Main's intention at the time of the firing can partly be ascertained by the evidence relating to him immediately before and after 17.08. It is common case that only a few minutes before he had personally thrown a blast bomb at a police landrover. It seems to me that this is evidence of determined hostility on the part of Main, and also consistent with a desire to "soften up" the vehicle prior to gunfire. Furthermore, shortly after the firing at 17.08, at 17.35 it is clear that Main is making manful efforts to assist another man who has a long barrelled weapon. Indeed Main takes that into his possession at one point. It seems inevitable to infer that this weapon had in some way jammed and that Main was seeking to assist in freeing it. Assisting someone to fire a long barrelled weapon of some kind at about 50 metres at police landrovers, albeit protected, seems to me to be further evidence, albeit of limited weight, of an intention to kill one or more police officers at around that time. It is part and parcel of

more general evidence from the videos and stills that Main was playing an active and prominent role in the organisation of these attacks on the police. I do not ascribe to him responsibility for all or any of the other 140 rounds fired at police personnel on the day in question as part of this murderous assault, along with blast bombs and pipe bombs. But his prominence and activity on that day seems to me to add to the weight of the Crown case that he personally was so incensed with the rerouting of the parade and with the police action in response that he intended to kill a police officer. The fact that he was subsequently found in possession of some seven weapons, three of which had been fired recently does nothing to undermine that evidence. Taking it together I am satisfied in the way that I must be that his intention was to kill. One is left with the unavoidable conclusion that if one of his rounds had penetrated a window of a landrover or a porthole and hit and killed an officer or hit an officer deploying from one of the vehicles the response of the accused would have been one of jubilation and not of surprise, let alone regret.

[45] By virtue of the Criminal Evidence (NI) Order 1988 I am entitled to take into account as an inference against the accused that he failed to give evidence. Although I do not think it a necessary part of my conclusion here it does seem to me that it is proper to take into account. It will be noted that Main gave no real explanation to police when interviewed. The evidence against him was crying out for denial or explanation on his part. To give that in the witness box would however have exposed him to cross-examination. It seems to me proper therefore to state that his failure to give evidence adds to the prosecution case against him. I convict him on the first count of the indictment.

Colin Harbinson

[46] Colin Harbinson was also at 84 West Circular Road at 17.08 on the evening in question. He had a separate firearm from Main. Like Main he fired at the police lines. I conclude from his own admissions and the other evidence that he emptied the magazine of his weapon at the police ie. 6-8 rounds. He too like Main steadied his firing arm with the use of his other hand.

[47] In one respect the case against him may be stronger than Main in that he has expressly admitted that there was a landrover turning away from him in front of 84 West Circular Road at that time and ahead of the rest of the police lines. However as stated before the Crown concede that it is not safe for me to conclude that was the landrover of acting Sergeant Milliken which received two rounds to the rear doors as she believed she was back in the police line at that time. The Crown ask me to convict Harbinson of attempted murder. They do so partly on the basis that this was a joint enterprise. But it seems to me there was very limited or no evidence, if any, before the court,

even by way of inference, to conclude that Main and Harbinson had a prior agreement to kill officers. While I conclude that that was Main's intention I simply do not know whether he shared that intention verbally with Harbinson before the firing at 17.08. It does not seem to me it would be safe to convict Harbinson on that basis.

[48] Otherwise Mr McMahon acknowledged that Harbinson was in a slightly better position, as he put it than, Main. He invited the court to draw an inference from Harbinson's failure to give evidence.

[49] Mr McComb for Harbinson acknowledged that his client had emptied the magazine and that his behaviour was indisputably shocking on the occasion but urged the court not to leap to the conclusion that his intention was to kill. He pointed to the clear character of the accused, having no criminal record but being a married man with four children. He had been in regular and useful employment until his remand on these charges. He said that the accused kneeling down to fire should not be counted against him as it reduced the extent to which the accused himself would be a target for return fire by hiding behind the bin and swing that had been placed in front of the gunmen. While his client had not given evidence he had spoken to the police. Initially this was a very partial version of the truth but he was more open with them in a second round of interviews. Nevertheless he maintained in those interviews that he was firing high and not intending to shoot police officers. I have to acknowledge that from the videos, and particularly the video stills D3 to 6 there is a possibility that Harbinson was elevating his weapon slightly when firing. Although he demonstrated a straight position to the police officers, and I accept the evidence in that regard, the evidence of his actual firing leaves one in doubt. Bearing in mind that even a 5 degree elevation above the horizontal would carry his rounds above the police vehicles this is a significant factor. Furthermore one does note that there is not the attempt to get forward to get a clear view of the police which is evident from Main's actions. More generally there is not on the video evidence the same picture of furious excitement that one gets from Main. Harbinson did not throw a blast bomb or other projectile at the police. This may have been partly from self-preservation and in the light of his active involvement in these matters he does not deserve credit for it but it is a distinction to be drawn with Main. Nor does he seem to assist in freeing the long barrelled weapon. He does not have the apparent organising or promoting role that Main has in the events in question.

[50] It is true that he did not give evidence. But he did speak to the police. It seems to me that even if I were to place his failure to give evidence on the scales against him, I could not be satisfied beyond reasonable doubt that his intention was to kill at 17.08 on the day in question. I find him not guilty of attempted murder.

