

Judicial Communications Office

1 December 2021

FINDINGS INTO THE DEATH OF THOMAS FRIEL

Summary of Findings

The Coroner, Mr Joseph McCrisken, today delivered his findings into the death of Thomas Friel who died in the Creggan area of Derry from a head injury which he sustained on 18 May 1973. He found that the fracture to Thomas Friel's skull which caused his death was most likely caused by a fall onto a hard surface and not by a rubber baton round fired by soldiers.

The Coroner reached the following conclusions on the evidence presented at the inquest:

"Events of 17/18 May 1973 - Thomas Friel"

[181] I am satisfied on balance that there had been considerable rioting in the Creggan area of Derry during the afternoon of 17 May 1973. Military logs record that the Army had discharged a large quantity of rubber baton rounds and CS Spray. Cars were hijacked, barricades built and crowds of mostly young people were engaged in rioting on the streets. The situation settled into the evening so that by around 23:00 the area was mostly quiet. The military logs indicate that although barricades still existed at certain locations the plan was that they would be removed in the early hours of 18 May 1973.

[182] During the course of the day Thomas Friel and his brother, Seamus Friel, consumed a large quantity of alcohol in the Telstar Public House, located on Central Drive, Creggan. Sometime around midnight Thomas and Seamus Friel exited the Telstar Public House. The evidence as it exists does not allow me to be any more specific about events concerning Thomas and Seamus Friel on 17 and 18 May 1973. Only two eye witnesses, Seamus Friel and Patrick Curran, describe the movements of Thomas Friel up until he arrived at Hugh Deehan's house¹. I am content to say that, by virtue of the quantity of alcohol he had consumed, I consider the account presented by Seamus Friel to be inherently unreliable. That is not to say that I consider Seamus Friel to have been dishonest when he provided his written account². It is entirely conceivable that Seamus Friel was recalling what he genuinely thought he saw and heard. However, his recall and perception is highly likely to have been adversely affected by alcohol as well as the chaotic conditions relating to the events he was trying to recall. As I will explain below, I do consider that Seamus Friel was not being truthful when he told the first aid, ambulance and initial medical personnel that Thomas Friel had sustained his injuries as a result of having fallen down stairs.

¹ Mr Deehan was on duty on 17 May 1973 in a part time capacity with the Order of Saint Lazarus providing first aid. His house was being used as a first aid post.

² Seamus Friel's initial account was that his brother had fallen down the stairs as he did not want the army going to the hospital to "lift him" for something he didn't do. In his subsequent statement to the RUC he stated that Thomas had been struck by a rubber bullet, though accepted he had not seen the bullet strike his brother.

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[183] By his own admission Patrick Curran had also been in the Telstar Public House and probably consumed alcohol. The account provided to the Pat Finucane Centre in 2011 was made some 38 years after the events and his recollection could not be tested since Mr Curran is deceased. Accordingly I have attributed little weight to the account given by Mr Curran.

Events on 17/18 May 1973 - Military

[184] I have considered those written accounts provided by military personnel to the RMP³ as well as the oral evidence given by some soldiers to this inquest. At the outset of these findings I outlined my concern regarding the accurate recall of events provided by witnesses at a remove of some 48 years. Some of the soldiers purported to recall some aspects of 17/18 May 1973 but mostly they could either not recall anything about particular events or had poor recall. In general terms the soldiers spoke of how things 'would' have been rather than how they actually were in relation to these events. I was left with the impression that these were men who were trying their best to help the inquest but genuinely, and understandably, found it difficult to remember these events. At many points during the inquest they were asked forensic questions regarding their perception of precise distances, which even witnesses who had witnessed similar events a short time ago might struggle with.

[185] I also heard evidence about how the RMP statements were recorded and the process that followed. I was told that soldiers would sit down with an RMP investigator and a statement would be recorded detailing the events. The RMP investigator would then pass a copy of the statement to his supervisor. It seems that other details may have been added at this stage. In this inquest the abbreviations "DYH" standing for "Derry Young Hooligans" appear to have been added after the soldiers made their statements since none of those soldiers who gave oral evidence could recall ever having heard this term before.

[186] I understand the concerns that the NOK have regarding the accuracy and credibility of the statements provided by the soldiers. As a result of a very liberal interpretation of Rule 9 of the 1963 Rules⁴, as originally enacted, L/Cpl Rogers, Soldiers B, C, D, E and F never gave oral evidence to the original inquest. Therefore, these accounts were not sufficiently scrutinised for accuracy at a time (1973/74) when the makers of the statements were more likely to recall events and properly answer questions regarding certain contentious issues. It is just not possible to carry out a similar exercise over 48 years later.

[187] There are certain aspects of the statements made to the RMP which, in my opinion, tend to suggest that they are broadly an accurate reflection of events. Firstly, they were made very close to the incident and as a result are more likely to be accurate than accounts made at a later stage. Secondly, the statements are consistent regarding certain events, although they are recalled slightly differently by the makers. For example, regarding the incident with the drunken man - L/Cpl Rogers told the RMP that a 'large woman' from an address in Rinmore Drive pulled the drunken man from Soldier C. Soldier B could not recall a female being involved but remembered the

³ Royal Military Police

⁴ The Coroners (Practice and Procedure) Rules (Northern Ireland) 1963

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incident and that it was the catalyst for the disturbances which were to come. Soldier C reported in his statement that he was accosted by a drunk man and a female came out of one of the houses in Rinmore Drive and began to shout 'the usual abuse.' Soldier D recalled the incident with Soldier C and also that a 'short, well built female' came out of an address in Rinmore Drive and grabbed the drunk by the neck. Soldier E could not recall a female being involved at all. Soldier F recalled a female dragging the drunk man away and recalled that she remarked to him that she would 'look after the man.' All of the soldiers, despite being in close proximity, remembered the incident slightly differently, a potential hallmark, in my experience of witnesses who are reporting their own memory and perception without collaboration with others.

[188] The timings detailed in the soldiers' statements are centrally important to my findings of fact. It is not entirely clear where some of the timings come from or how the soldiers provided timings which do correlate with each other. It is possible that the RMP completed the timings from military logs which were not available at this inquest and the soldiers did not recall the exact timings themselves. This would not be unusual since a private on the ground involved in an operation with no radio would hardly be expected to have an accurate recall of exact timings. I heard no evidence on this issue. However, some military logs are available and relevant entries are detailed above. I am satisfied that these log entries are contemporaneous and are likely to be accurate.

[189] Therefore, I am satisfied on balance that the following occurred. At approximately 23:45 on 17 May 1973 three sections of soldiers under the command of L/Cpl Rogers, were tasked to provide support for a party of soldiers who were involved in fixing the wire fence around Piggery Ridge Army Camp, Blighs Lane. The area at this time was quiet. There were no streetlights illuminated on Blighs Lane but the streets of the Creggan did benefit from street lighting. These sections made their way down Blighs Lane from the camp to the junction with Creggan Heights and around various streets until they reached Rinmore Drive. The purpose of the patrol was to move into nearby streets and look out for gunmen or snipers who may pose a threat to the soldiers repairing the fence. Soldier F gave evidence on this issue and was very clear that there would have been very little point in the patrol tasked with providing cover to be standing beside or close to the 'wire party' since this would have made them a target for a sniper. Operationally it was more useful if the patrol were to observe nearby streets and houses within which snipers may seek to conceal themselves.

[190] In Rinmore Drive a drunk man caused a disturbance with a number of the patrol including Soldier C. A well-built or large female came out of a nearby house and either offered to assist the drunk man or abused the soldiers for being present or both. Either way the presence of the soldiers was marked by shouting, banging of bin lids, whistles and car horns. Some people then appeared onto the street. The patrol moved out of Rinmore Drive in a westerly direction to Balpane Pass before, at approximately 00:55, they were instructed to deploy to Creggan Heights. As the patrol entered onto Creggan Heights a crowd of about 15-20 youths appeared to the rear of the patrol. These youths began to shout abuse at the patrol. There was a further crowd of youths present in the area of the junction. This crowd were involved in throwing missiles at another section of soldiers commanded by a non-commissioned officer.

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[191] As the patrol commanded by L/Cpl Rogers approached the junction of Blighs Lane and Creggan Heights a separate group of youths who were at the junction began to throw stones and other missiles including bottles in the direction of the army patrol. Soldier D and three other men were deployed into an adjacent alleyway to approach the junction in a two-pronged approach and disperse the crowd. Once both groups of L/Cpl Rogers' patrol reached the junction the crowd dispersed into nearby houses.

[192] L/Cpl Rogers deployed up Blighs Lane and into a 'sunken track' located to the right. The sunken track at that time led in the direction of an underground reservoir. I am satisfied that there was no gate and probably no fence therefore, the sunken track could be easily accessed. The track was sunken with the bank closer to Creggan Heights providing a degree of cover for soldiers who were positioned on the track. The entrance to the sunken track was probably 85 metres from the junction according to Mr Murphy. It is highly likely that the path which currently runs from Blighs Lane to the reservoir is very different to the sunken track that was in place at that time. I am satisfied that it is broadly in the same position. I am also satisfied that without streetlights this area would have been very dark at that time of day.

[193] The patrol remained in the sunken track for about ten or so minutes. As they waited a crowd of youths, numbering approximately 30 people, gathered at the junction of Blighs Lane and Creggan Heights.

[194] At approximately 00:55 L/Cpl Rogers received instructions from his operations room to deploy to Balpane Pass as there had been a report of people acting suspiciously. As the patrol commanded by L/Cpl Rogers moved out the crowd at the bottom moved further up Creggan Heights and the patrol were able to move through the junction, across Creggan Heights and into an alleyway between 83 and 85 Creggan Heights. Soldier D and three other soldiers, including Soldiers C and B who were armed with baton guns, remained behind to secure the junction. This makes sense since the part of the patrol commanded by L/Cpl Rogers needed to have access back to Blighs Lane and the army camp.

[195] As the part of the patrol which included L/Cpl Rogers were observing Balpane Pass from the alleyway they were approached from behind by a crowd of youths who started to throw missiles including stones at the patrol. L/Cpl Rogers pulled back through the alleyway, out onto Creggan Heights and past the part of the section which included Soldier D. As L/Cpl Rogers ran past he instructed Soldier D to order the deployment of baton rounds to disperse the crowd. Soldier C and Soldier B both fired at least two baton rounds each towards the youths. Army radio logs recorded:

"[00.59] - C/S 22 fired 2 Baton Rds at a crowd of 30 at junc BLIGH'S LANE/CREGGAN HTS.2"

[196] I am satisfied that this incident occurred as reported by the soldiers as is corroborated by the contemporaneous radio log entry. The youths retreated before congregating again at the junction once the entire patrol commanded by L/Cpl Rogers made their way back up Blighs Lane to the sunken track. I appreciate that the radio log (above) does not completely correlate with the soldiers' accounts but I am satisfied that not every baton round fired was reported via radio. The logs make it clear that over the

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course of 17 May 1973 over 500 baton rounds were discharged. Each one was not reported by radio.

[197] At inquest, counsel for the NOK suggested to the soldiers who gave evidence that there was very little, if any, rioting that evening. Yet, the military radio logs clearly report that crowds of youths were involved in altercations with the army. At 00:59 (see entry above) a crowd of 30 were reported at the junction of Blighs Lane and Creggan Heights. The next radio entry at 01:17 reports a crowd of 70.

[198] Mr Deehan recalled being stopped by a group of youths close to his home on Creggan Heights and Mr Lynch recalled a group of youths as did Mr Doherty. Mrs Nixon recalled seeing a crowd of about 30-40 in the area around 85 Creggan Heights and therefore, close to the junction, who were all 'hot headed.' I am satisfied to the required standard that following the discovery of a military patrol following the incident with the drunk man there were further disturbances involving multiple groups of youths set on causing trouble with the army. I am satisfied that following deployment of the patrol commanded by L/Cpl Rogers at 00:55 two groups were involved in throwing missiles including bricks, stones, masonry and glass bottles at the soldiers. During this altercation a minimum of four rubber baton rounds were fired. Soldier C recalled being told by Soldier D to fire at a person who was running away but he did not strike this person. Soldier D saw one man fall to his knees and clutch his chest. This man was dragged away by the crowd. Soldier B recalled hitting a youth on the leg. This youth then ran away.

[199] Importantly, I am also satisfied that Thomas Friel sustained his injuries during this altercation and not at a later time as previously concluded by the RUC. It does not ever seem to have been considered that Thomas Friel could have been present at this earlier altercation and could have sustained his injuries as a result of his involvement. It always seems to have been assumed that he was injured in a later altercation with the soldiers. Perhaps this comes from the RUC conclusions which I have dealt with below.

[200] Yet, the soldiers in their accounts each record that this altercation took place a short time after 00:55 when the patrol commanded by L/Cpl Rogers was ordered out of the sunken track to Balpane Pass. This timing is corroborated by the radio log.

[201] Mr Doherty, Mr Lynch and Mr Deehan all recalled that they were present at Mr Deehan's house (85 Creggan Heights) at about 01:00 when Thomas Friel was already in the house in an unconscious state. The maps indicate that Mr Deehan's house is a very short distance from the scene of this altercation.

[202] The ambulance records show that the ambulance was tasked at 01:15. The later incident during which Soldier B discharged a rubber baton round at a youth wearing a white top is recorded to have occurred around 01:20 - after Thomas Friel had arrived at Mr Deehan's house.

[203] During the inquest I asked PIPS to consider why it was thought that Thomas Friel was injured having been struck by a baton round fired by Soldier B during the later altercation despite there being no solid pathology findings to support such an

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assertion. I think it is fair to say that no confident answer was forthcoming. However, the papers considered at inquest seem to disclose a possible answer.

[204] Following the death of Mr Friel and statements being recorded by the RMP the matter was considered by the RUC. Initially a report was prepared by Detective Constable Parks (deceased) on 10 September 1973 for the attention of a Detective Inspector in the Criminal Investigation Department (CID). I need not rehearse all of this lengthy report here but there are some interesting and curious comments which do warrant some scrutiny.

[205] At paragraph 6 DC Parks says:

"From the evidence to hand it would appear that Soldier B fired the baton round which struck the deceased."

[206] DC Parks does not go on to elaborate on the 'evidence to hand' but continues into the next paragraph where he says:

"I feel there is little or no point in going into great detail about what occurred during the early stages of the morning as the main time factor would appear to be at the latter end of the rioting when the deceased apparently received his injuries."

[207] It would appear from this comment that DC Parks has discounted any possibility that the injuries could have occurred at a time in 'the morning' earlier than the incident reported by Soldier B. It is possible that he does not consider that Thomas Friel was injured when the soldiers engaged with the crowd shortly after 00:55.

[208] DC Parks then goes on (paragraph 8) to describe the account provided by Soldier B in his statement to the RMP. He notes the observation of Soldier B that at 01:20 he was lying in the sunken track when the patrol were attacked by youths. He goes on to note the incident as described by Soldier B including a description of the rioter's clothing who Soldier B thinks he shot with a rubber baton round. The man, according to Soldier B, was wearing a white jacket. Indeed Soldier B aimed for the area of the white jacket. DC Parks notes that when Seamus Friel made his statement he described Thomas Friel as wearing a dark jacket, blue jeans and a white polo necked sweater.

[209] At paragraph 12 DC Parks notes the ambulance was tasked at 01:15 and the observations of Mr Doherty, Mr Lynch and Mr Deehan that the deceased was present at 85 Creggan Heights at about 01:00. Further, at paragraph 18, DC Parks says, in relation to the post-mortem report of Dr Carson that the 'most important point' is his (DC Parks') belief that Dr Carson was not able to determine which of the two accounts (stairs or rubber baton round) is the correct one.

[210] DC Parks goes on to outline his view. He says after having carefully read all the facts contained in all the attached statements he thought that Thomas Friel was the rioter in the white coat as described in Soldier B's statement. He goes on to explain the apparent differences in clothing between Thomas Friel and the rioter described by Soldier B by saying that Thomas Friel may possibly have removed his dark jacket revealing his white top and giving the impression he was wearing a white jacket.

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Crucially, although DC Parks highlights, as a second point to consider, the glaring inconsistency in timings, he does not provide an explanation for the very obvious discrepancy, nor does he suggest any further investigative lines of enquiry.

[211] Despite these clear inconsistencies and the equivocal pathology report DC Parks makes the following quite incredible statement at paragraph 23:

"In this one the facts I believe speak for themselves and I have no doubt that Thomas Friel through his own actions brought upon himself his own death and that the soldier involved was carrying out his duties in a lawful manner and should remain blameless."

[212] The report of DC Parks was forwarded to a Detective Chief Inspector (DCI) for consideration. To the credit of the DCI he at least picks up on the discrepancy in terms of timings:

"The only thing which does not tie up is the time at which Soldier B states he fired the rubber bullet (0120hrs) and the time the ambulance was called 1.15am. In fact it would have been around 1am when the incident occurred..."

[213] However, he explains the discrepancy by saying *"in the heat of battle the soldiers would in all probably (sic) loose (sic) track of time."* Once again no further investigative leads are suggested to resolve this issue. The RUC did not, it seems, have access to the military radio logs and sought no access.

[214] How then did Thomas Friel get injured during the 00:55 altercation? To answer this question I turn to the crucial evidence of the four forensic pathologists whose evidence I considered at inquest.

[215] Firstly I will consider a post-mortem report written by Dr Derek Carson, former Deputy State Pathologist for Northern Ireland. It was accepted by everyone at inquest that Dr Carson was a hugely experienced and skilled forensic pathologist with lengthy experience in death investigation. Dr Carson concluded that interpretation of the injuries was difficult. He said the injury on the left forehead not associated with a skull fracture or brain injury could have been caused by a fall downstairs or from the nose of a rubber bullet. However this injury on its own would not have been life threatening. Dr Carson was of the view that the skull fracture on the left side was most unlikely to have been caused by a rubber bullet since it was above the thin temporal bone which could perhaps be damaged by a missile. He felt that it was much more likely to have been caused by a heavy fall on a relatively flat, hard surface. He opined that he may have been hit first on the forehead by a rubber bullet and then fell heavily striking his head on the ground. This however would not explain the abrasions on the right forehead. Interestingly, Dr Carson's handwritten notes made at the time of the post-mortem examination record that there was some bleeding over the spine at the level of the neck. Dr Carson removed some of the spine for further analysis. No bleeding was found within the spine. However, I am satisfied that there was some injury to the spine indicated by the bleeding visible at post-mortem.

[216] Dr Shepherd provided a report to the Historical Enquiries Team. It was Dr Shepherd who first mentioned a fracture to the right side of the skull, something that

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Dr Carson, according to Dr Shepherd, had failed to spot. There is no doubt that Dr Shepherd is a hugely experienced Forensic Pathologist who has been involved in many high profile and controversial deaths. Yet, in terms of his view that there was a fracture to the right side of the skull, this was erroneous. He accepted this in an addendum report which I received prior to the inquest. I was grateful for the concession but the genesis of this erroneous conclusion was not explained.

[217] Dr Shepherd opined at inquest that the abrasion to the right side of the head, in the shape of an outline of a rubber baton round, was indeed caused by a rubber baton round striking the head of Thomas Friel. He considered that a cylindrical object like a baton round could make 'tramline' abrasions and the shape of a small triangle seen to the right side of the head. Explaining the injuries Dr Shepherd said that in his opinion the baton round struck the right side of Thomas Friel's head causing the abrasion and underlying brain damage noted by the surgeons and at post-mortem. The impact of the baton round to the right side of the head had also caused a 'distortion fracture' to the left of the skull and the force of this strike had been sufficient to 'spring' the coronal suture. Dr Shepherd referred to a Forensic Pathology text book in support of his view that such a 'distortion fracture' could occur.

[218] Dr Shepherd is an experienced Forensic Pathologist but in all the circumstances of this inquest the evidence from Dr Carson, Professor Crane and Dr Swift is to be preferred. Faced with the more extensive experience of Professor Crane, in terms of baton round injuries, Dr Shepherd was not prepared to concede that the injury to the right side of skull was in all likelihood not caused by a rubber baton round. During questioning he continued to rigidly stick to his theory of a baton round strike to the head and a distortion fracture of the skull despite the other pathologists casting serious doubt on the likelihood of such an occurrence. The other pathologists drew my attention to that fact that there was little or no bruising or bleeding under the side of the abrasion. Dr Shepherd claimed that he could see evidence of bruising and bleeding. I was not at all convinced about his evidence on this issue.

[219] When Dr Shepherd originally provided his report he said that the triangular shaped abrasion lay directly over the site of a skull fracture on the right hand side of the skull. When it was pointed out to him that there was no fracture on the right hand side of the skull, and when he conceded that he was wrong, he changed his evidence to conclude that a strike to the right hand side of the skull had caused a fracture on the left hand side of the skull. The other pathologists were highly sceptical about this theory and were at pains to emphasise to me that while so called "compression fractures" can occur, they are extremely rare.

[220] Dr Benjamin Swift, himself an experienced Home Office Forensic Pathologist, disagreed entirely with Dr Shepherd. Dr Swift said the abrasions to the right side of the head were not consistent with a rubber baton round strike since a cylindrical object would have left tramline 'bruising' as opposed to 'abrasion.' He explained that the mark to the right side of the head was clearly an abrasion and must have been caused by something with a rough surface. Dr Swift said that the fact the surgeons had not mentioned this injury even after shaving the head for surgery must mean that it was not present. He suspected it had been caused during the surgery, in the ICU or even post-mortem. I am inclined to agree with Dr Swift on this issue. I am satisfied on

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balance that the abrasions to the right side of the head occurred either when surgery was being performed or in the period between the completion of surgery and before death. It would be highly unlikely for a surgeon presented with such an injury to right side to then decide to drill a burr hole on the left side. More likely, that no such injury was present.

[221] In terms of the head injuries, Dr Swift said the injury to the forehead could have been caused by a fall or a missile. He doubted that it had been caused by the end of a rubber baton round. He was in agreement with Dr Carson that this was a separate injury to the fracture.

[222] In terms of the fracture to the left side of the skull Dr Swift agreed with Dr Carson and said that this was most likely caused by a fall onto a hard surface. He noted the presence of brain damage to the left side under the fracture but also to the right side where some blood had been evacuated during the surgical procedure to drill two burr holes. Dr Swift considered that this type of 'contrecoup' injury is entirely consistent with the head striking a hard surface.

[223] I thought Dr Swift was an impressive witness. He focussed on the injuries received and the most likely known causes for this type of injury. He was prepared to concede that Professor Crane had greater knowledge of impact injuries caused by rubber baton rounds.

[224] I instructed Professor Jack Crane, former State Pathologist for Northern Ireland, to review the original post-mortem report written by his one-time colleague Dr Carson. Professor Crane was adamant that the injury to the right side of the head could not have been caused by a rubber baton round. He explained that when a cylindrical object strikes the skin it can leave parallel bruises as the object pushes blood from the centre to the sides. However, he was quite sure this could not be the case with an abrasion. The injury to the right side of the head was an abrasion and whatever had caused this injury, it was not a rubber baton round. As for the injury to the left side of the head Professor Crane thought that an accelerated fall onto a hard surface could be responsible. He noted bruising to the left eye and cheekbone area of Thomas Friel, not recorded by Dr Carson. Professor Crane said these types of injuries tended to occur to the back or side of the head. He said the shoulder could protect the side of the head from impact but it was still possible to sustain an injury to the side of the head by a fall.

[225] Professor Crane also thought a strike from a rubber baton round could have caused the fracture to the left side of the skull. He was not necessarily concerned with the lack of external injury to the side of the head.

[226] I am satisfied to the required standard, considering the opinions of all of the pathologists and applying my own not inconsiderable experience as a death investigator, that Thomas Friel sustained three separate injuries to his head.

[227] On balance, the first in order of sequence was a blow to the left side of the forehead. I consider it most likely that this injury was caused by him being struck by a missile of some sort during a disturbance involving a crowd of youths and the army. I

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am satisfied that Thomas Friel was highly intoxicated when he arrived to Creggan Heights. He could possibly have been trying to get to Piggery Ridge camp in accordance with the view of Seamus Friel and Patrick Curran. Alternatively, he could have been making his way home along the lower pedestrian section of Blighs Lane from Central Drive when he arrived onto Creggan Heights during a disturbance. However he got there, I am satisfied that while in Creggan Heights he was with the crowd who were involved in stoning the army patrol. It is more likely than not that this injury to front of his head caused him to fall to the ground. The injury, although, not life threatening, was not trivial. Post-mortem examination and photographs showed considerable under scalp bleeding associated with this injury. I am satisfied that it was of sufficient force to have caused Thomas Friel to fall to the ground, possibly unconscious. When he fell he struck the left side of his head and face. The post-mortem photographs show bruising to the left of the face and eye. This accelerated fall onto, probably, the road surface, caused the left sided fracture of the skull and a coup-contrecoup injury to the brain. There was a third injury to the top of the skull perhaps caused by the fall. I am not able to say on balance exactly how this injury was caused.

[228] It is likely that the scene during the disturbance was fast paced, frenzied and chaotic. At least two, and probably more than two, rubber baton were discharged striking at least two people. I am not persuaded, based on the evidence that I have heard, that Thomas Friel was struck with a rubber baton round. It is, of course, possible that he may have been, but I do not consider that this is the most likely scenario based on the evidence which I have heard.

[229] This altercation took place around 01:00. Thomas Friel was unconscious at the scene, in Creggan Heights and was brought quickly to Mr Deehan's house which was very close by. When Mrs Nixon observed the ambulance arrive there was still a crowd of 30-40 present. None of them could explain how Thomas Friel had been injured, frankly it seems to me, because no-one, including Seamus Friel, knew how he had been injured.

[230] I am satisfied that Seamus Friel, also emboldened by alcohol, was also present during the disturbance. When he brought Thomas Friel to Mr Deehan he must have known that (1) he was likely injured in the riot/disturbance; (2) might get into trouble if this was discovered; and (3) was under the terms of a suspended prison sentence. Although intoxicated Seamus Friel still had the presence of mind to give an innocent explanation as to how his brother had been injured to try and protect him.

[231] I don't find it difficult to accept that Seamus Friel reasonably thought, in his condition and in the chaotic conditions that prevailed during the disturbance/riot, that there was a possibility that his brother had been struck with a rubber baton round. Baton rounds had indeed been fired and his brother was seriously ill with an injury to the head. In hospital I believe he may have genuinely thought this was the method of injury and wanted to give the medics this information in case it helped. He could not, of course, tell the whole truth so it is likely that he came up with a version of how he and Thomas were innocent parties and not involved in any rioting.

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[232] Taking into account my findings outlined above, therefore, I am satisfied, based upon all of the evidence, that Thomas Friel did not sustain injuries to his head following a fall down stairs. Quite apart from the pathologists being doubtful about such a scenario, the only information I heard regarding a potential location for a fall was from Mr Deehan who mentioned the Telstar pub. Pathology indicates a catastrophic injury to the skull and brain. My view is that Thomas Friel was very likely rendered unconscious by the impact. If this had occurred at the Telstar then he would have had to have been carried in an unconscious state by his brother, who was heavily intoxicated and maybe another friend, a considerable distance from the Telstar to Creggan Heights.

[233] Since I have arrived at a conclusion that, on balance, Thomas Friel was not hit with a rubber baton round fired by a member of the army it would not be appropriate for me to comment on the material concerning rubber baton rounds, their introduction, training, use or guidance. Since the death did not involve any use of force on the part of an agent of the state I do not need to enquire into the justification for use of force.

Final comments

[234] Thomas Friel was clearly a much loved member of the Friel family. I was told that he was one of 10 children. Liam Friel, his younger brother, told me that Thomas would have helped anyone out. He kept pigeons at his home address and enjoyed spending time outdoors. Clearly his loss was felt very deeply by the family and the disputed circumstances of his death only added to the grief.

[235] Liam Friel told me at inquest that the family wanted 'justice' for Thomas after all these years. Liam told me that he believes Thomas was struck by a rubber baton round and that this caused his death. My findings are, therefore, perhaps not what Liam was expecting.

[236] 'Justice' can, of course, be interpreted differently depending on circumstances or expectations. 'Justice' is defined as 'just behaviour or treatment', 'the quality of being fair and reasonable' or 'the administration of the law or authority in maintaining this'. I believe that 'justice' in the context of an inquest, administered fairly, means answers to certain questions concerning the death of a person.

[237] Each issue considered during this inquest was forensically examined in a degree of detail that was simply not possible 48 years ago. Thousands of pages of evidence was considered and oral evidence taken from 16 witnesses and the evidence of others was admitted. Experts in ballistics and forensic pathology were examined for many hours. I consider that the family have been treated justly, fairly and reasonably. They, in turn, have shown great patience and have themselves behaved in fair and respectful manner. I urge them to consider these findings and trust that when they do they will consider that 'justice' has indeed been done and answers have been provided explaining, finally, the circumstances surrounding the death of Thomas Friel.

Verdict on Inquest

Name:

Thomas Friel

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Sex: Male
Date of death: 22 May 1973
Place of death: Altnagelvin Hospital, Glenshane Road, Derry.
Usual Address: 70 Creggan Heights, Creggan Derry.
Marital Status: Single
Date and place of birth: 9 April 1952, Derry.
Occupation: Labourer.

Cause of Death: 1a Bruising, necrosis and oedema of brain *associated with skull fracture due to* 1b blow on the left side of the head."

NOTES TO EDITORS

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on the Judiciary NI website (<https://judiciaryni.uk>).

ENDS

If you have any further enquiries about this or other court related matters please contact:

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