

In the Crown Court at Manchester

Sitting at Salford Quays

Mr Justice William Davis

The Queen

and

Peter Metcalf

Donald Denton

Alan Foster

RULING ON SUBMISSIONS OF NO CASE TO ANSWER

PRESS SUMMARY

NOTE This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: <https://www.judiciary.uk/judgments/>

On 20 April 2021 the trial of Peter Metcalf, a retired solicitor, and Donald Denton and Alan Foster, both retired police officers, commenced. All were charged with committing acts tending and intending to pervert the course of public justice. The prosecution case was that each had been involved in altering and/or amending statements made by South Yorkshire Police officers in relation to the disaster which occurred on the afternoon of 15 April 1989 at Hillsborough Stadium in Sheffield. The occasion was the FA Cup semi-final between Liverpool and Nottingham Forest. As a result of crushing in standing pens at the end of the ground being occupied by Liverpool supporters, 96 supporters were killed and many more were injured.

The Home Secretary immediately established a public inquiry. Lord Justice Peter Taylor was appointed to chair the inquiry. West Midlands Police were designated as the police force supporting the inquiry and carrying out relevant investigative functions. It quickly became apparent that, because of the number of people – police officers, other emergency workers, stadium staff - who had witnessed the events of that afternoon, West Midlands Police would not be in position to obtain witness statements from those people. In relation to police officers, South Yorkshire Police were asked to obtain statements or accounts from their officers for onward transmission to West Midlands Police and thereafter to the public inquiry. In fact, many officers had already provided written accounts to assist the Chief Constable of South Yorkshire Police in the preparation of his submission to the inquiry. The officers had been asked to provide accounts to include any comments they wished to make and any emotions they felt during and after the disaster. Many South Yorkshire Police officers who made statements thereafter also included comments and their feelings.

At the end of April 1989 Lord Justice Taylor held a preliminary hearing at which he said that he wished to have statements from anyone who had anything to contribute to his understanding of the events of 15 April. He said that he required factual evidence and not comment and non-expert opinion. The inquiry opened on 15 May. Counsel to the inquiry said that only witnesses who could give factual evidence would be called at the first stage of the inquiry.

Peter Metcalf was the solicitor acting for South Yorkshire Police and their insurers. It was agreed between Mr Metcalf and South Yorkshire Police that evidence to be provided to the inquiry should be factual and should not contain comments and feelings. Since many accounts provided by police officers contained both, some form of editing process was necessary. The process agreed was that Mr Metcalf would advise on editing required, that the advice would be passed to Mr Denton (then a Chief Superintendent) and that the editing itself would be carried out by Mr Foster (then a Chief Inspector). In some cases Mr

Foster carried out editing without any specific advice from Mr Metcalf. In total between April and August 1989 Mr Metcalf advised in relation to the accounts of over 430 South Yorkshire Police officers. In the same period Mr Foster considered over 450 accounts, the excess being those accounts he considered in the absence of advice from Mr Metcalf.

The prosecution case was that, in relation to 58 accounts, the editing advised by Mr Metcalf tended and was intended to pervert the course of public justice because passages were removed which were references to failings on the part of South Yorkshire Police. In particular, he took steps to remove matters which had been set out in the Salmon letter issued on 9 May by the inquiry i.e. a letter giving a preliminary indication of the criticisms likely to be levelled at South Yorkshire Police. By putting Mr Metcalf's advice into practice, Mr Denton and Mr Foster were party to acts tending and intended to pervert the course of public justice. In addition, Mr Foster acted in the same manner in relation to 9 accounts where he was not acting on the specific advice of Mr Metcalf.

There was a further limb to the case against Mr Metcalf. In 1990 the High Court heard proceedings in which South Yorkshire Police sought a contribution to the damages due to the victims of the disaster from other parties including Sheffield Wednesday Football Club. One issue in those proceedings was responsibility for monitoring the standing pens i.e. was it club stewards or police officers who bore this responsibility? Mr Metcalf produced a draft statement for four ranking South Yorkshire Police officers in relation to this issue. The prosecution case is that production of such a statement tended and was intended to pervert the course of justice.

At the close of the prosecution case a submission of no case to answer was made in relation to each defendant. In each case the submission was upheld and the jury was directed to acquit. In summary the reasons for this ruling were as follows:

1. The offence of doing an act tending and intended to pervert the course of public justice did not apply to the public inquiry. Although chaired by a senior judge, the inquiry was carrying out an administrative function for the Home Secretary. It was not a process of public justice. The offence is a common law offence designed to protect the exercise of judicial functions. Whatever the defendants did in relation to the public inquiry, they could not and did not commit the offence charged.
2. What was done in relation to the accounts of police officers could not tend to pervert the course of coronial justice i.e. the inquests which would follow the public inquiry. An inquest is a course of public justice.

However, in 1989 the ambit and purpose of an inquest was limited. Nothing done by the defendants could have affected that purpose. Moreover, the evidence called in relation to the inquests which took place in 1990 was very limited. The jury had no evidence which would have enabled them to decide what evidence was called at the inquests or for what purpose.

3. The offence can be committed in relation to a criminal investigation even if proceedings have not begun and even if the precise offence is not yet known. However, the prosecution in this case could not demonstrate how the defendants' acts had the tendency to pervert any investigation into any offence.
4. Likewise the offence can be committed in relation to civil proceedings. So far as the acts committed in 1989 were concerned, no amendment of any account was positively misleading. Matters may have been omitted. This was (and is) permissible when a party is preparing evidence for use in civil proceedings.
5. In relation to what happened in 1990, Mr Metcalf's production of a draft statement was accompanied by a clear indication that the officers should not adopt it unless it represented their recollection. Producing a draft statement in those circumstances could not tend to pervert the course of public justice.
6. Analysis of the amendments made by Mr Metcalf and/or Mr Foster showed that as a matter of fact the great majority of them did not tend to pervert the course of public justice however it might be defined.
7. In relation to Mr Denton there was no sufficient evidence that he knew the nature and extent of any amendments made or that he took any active part in the amending of statements. He simply acted as a conduit for Mr Metcalf's advice as it was passed to Mr Foster.

It is apparent from the transcript of the inquests before Sir John Goldring between 2014 and 2016 that the amendment and alteration of self-penned accounts has caused very considerable anxiety and distress amongst those most affected by the Hillsborough disaster.

These proceedings before me have been very drawn-out following a lengthy trial process involving the match commander. I know the strength of feeling there was after his acquittal. However, whatever the anxiety and distress, I have to determine whether there is evidence to support the particular criminal offence with which these defendants have been charged. In concluding that there is not, that is all I do.

26 May 2021