

ROSEMARY NELSON INQUIRY

Day 11: 29th April 2008

Opening submissions by Mr Rory Phillips QC, lead Counsel to the Inquiry (continued)

Mr Phillips stated that he would be looking at four areas of security force activity in particular: the vehicle checkpoint on Castor Bay Road; a man in a balaclava and what may have appeared to be unexplained activity by police land rovers; two flights by helicopters; and some unexplained activities alleged by witnesses who had given statements to the Pat Finucane Centre (an NGO) rather than to the police.

Some witnesses had stated that there was a vehicle checkpoint on Castor Bay Road, which was very close to Rosemary Nelson's house, on the evening before her death. The police and military had no record of any such checkpoint operating. The allegation that there was a checkpoint there came from three members of the McStravick family. The McStravicks had attended the funeral of a family friend and then had a meal with their daughter because it was Mothering Sunday (14 March 1999). The driver, Bernard McStravick, stated that there was a checkpoint with land rovers on the Castor Bay Road, at a point locally known as Mile House, at about 8pm. He and his brother believed it was a military checkpoint, although his wife was not so sure. They were waved through rather than being stopped. They stated that this was not a point at which they would have expected to see a checkpoint.

The Patterson family made a similar statement, saying that they had seen a checkpoint near Rosemary Nelson's home at 9.30pm on the Sunday night. The murder investigation team stopped motorists on the same stretch of road one week later, on 21 March 1999, to ask if they had seen a checkpoint there the previous week. None of those saw a checkpoint in that location.

On the incident with the man in a balaclava, no explanation was available from police records for the presence of a police land rover at the top of Victoria Street between 8pm and 8.30pm during the evening of Sunday 14 March. Some witnesses alleged that they saw a man wearing a black balaclava climbing into a police land rover at that time, assisted by two Royal Ulster Constabulary (RUC) officers. More generally, witnesses alleged that there was land rover activity on Lake Street, which was in conflict with police and army records.

Joseph O'Connor stated that he had been returning to Lurgan with his then girlfriend, Christine Barry, following a concert when he saw men in dark combat gear and ski masks climbing into a police land rover on Lake Street. The murder inquiry team found no record of police land rover activity on Lake Street at that time. However, they did discover an incident on the evening of Saturday 13 March at about that time in which a police constable dressed in full riot gear had climbed out of a police land rover at that location and adjusted his helmet before climbing back in. Joseph O'Connor had however

stated that he had been attending a concert in Belfast which had only taken place on the Sunday night and not on Saturday.

Mr Phillips then turned to the question of helicopter flights. Helicopters were frequently used by security forces in Northern Ireland in 1999 for transport and surveillance. Many witnesses had stated that there had been an increase in helicopter flights around Lurgan in the days leading up to the murder. The murder investigation team had made inquiries with the RAF, the army air corps and air traffic control. They concluded that all helicopter flights in this period were routine and consistent with ongoing operations. The inquiry had focused on two specific flights, both of which flew close to Rosemary Nelson's house on Sunday 14 March.

During that weekend, there had been a number of public order incidents in the Kilwilkie Estate. Many of these had been viewed by police as attempts to lure them to intervene. The police therefore requested helicopters to observe the area from above.

The first flight was made by the helicopter Gazelle 4. It was tasked at about 5pm on Sunday 14 to collect the liaison officer (whose job it was to provide local knowledge and to direct the pilot) from Mahon Road in Portadown and then to proceed to the Kilwilkie Estate. The helicopter arrived over Lurgan at 6.07pm and made a video recording of public disorder which was occurring. It left the area at 6.50pm to refuel at RAF Aldergrove, returning at 7.20pm before concluding its mission at 8pm. This was significant because the video recording was never recovered, despite extensive enquiries by the murder investigation team.

The second helicopter, Gazelle 6, had two crew who had given statements to the Inquiry and also carried the same liaison officer. It flew over Lurgan between 11.25pm and 11.50pm on the night of Sunday 14. There was no proper paper trail accounting for this flight. However, Mr Phillips noted that this should be seen in the context of 12 unspecified flights having been made by the Army Air Corps between 12 and 15 March. On the other hand, those on this flight only belatedly confirmed to the Inquiry that this flight had taken place, despite in some cases making as many as five separate statements. The officer in charge of investigating the fate of the video tape from Gazelle 4 was initially told that there were no helicopters with recording capabilities over Lurgan during the relevant period.

Mr Phillips then turned to allegations made to the Pat Finucane Centre. He stated that the Inquiry team considered that statements made to the Pat Finucane Centre did not, all things considered, take matters any further than the murder investigation team had already done.

Mr Phillips then turned to matters concerning the murder scene. Some witnesses alleged that soldiers had been laughing and joking at the murder scene. Ruby McConville stated that the behaviour of security forces at the cordon was inappropriate, but that she later saw two land rovers and one soldier shouting to another that "we have got her now".

A police officer who was present at the inner cordon at the scene, tasked with shielding Rosemary Nelson's car while the doctors and paramedics did their work, made a statement to the inquiry. He had made a statement to the police in May 1999 and then added to it in May 2004 when, he said, he had been discussing his experience at the scene with other officers in a Belfast pub and told them that he had seen a sergeant apparently contaminating the scene. The other officers had encouraged him to make a statement about the incident and he had then done so the following day. According to this officer, a sergeant had kicked a black metal object which looked like either a magnet or a battery. When he had challenged him, the sergeant had said "She is better off dead". Four sergeants at the scene had been eliminated by the murder investigation team and a fifth had moved to Canada and could not be interviewed by the inquiry.

Mr Phillips then turned to the suggestion that a request to radio in to police a sighting of a suspicious individual was refused. Christopher Jopling, who worked with army infantry units to observe individuals of interest to the security forces and record their movements, stated that he saw two Loyalists at the scene, which was in a staunchly Republican area. He spoke to the team commander and asked him to radio this sighting in, but the commander told him that there was no need to pass this information on. Mr Jopling recorded the sighting in his notebook.

Mr Phillips then turned to the matter of whether the investigation into Rosemary Nelson's death was carried out with due diligence. The Inquiry had commissioned a report from an expert, Mr Robert Ayling, on the question. It had also obtained a relatively uncontentious account of the course of the murder investigation from the police, which was presented in a redacted version. The senior officers involved in the investigation were yet to provide statements to the inquiry. The supporting documentation for the Ayling Report was still unavailable pending redaction.

Mr Phillips described the senior investigating team in the investigation into Rosemary Nelson's murder. This team consisted of Mr Port, Mr Provoost, Mr Kincaid and an officer whose identity was ciphered, M540. Mr Kincaid was senior investigating officer from the day of the murder until August 2000. M540 was his deputy, then took over in August 2000 and continued as senior investigating officer until his retirement in May 2005. Mr Port was the officer in overall command of the investigation from 6 April 1999 to 31 December 2002. Mr Provoost was his deputy and succeeded him at the beginning of 2003. The murder investigation was still being carried on currently, albeit with a reduced team.

Mr Phillips noted that there were circumstances particular to Northern Ireland which meant that intelligence was not always shared between police agencies. Mr Kincaid had been responsible for changes so that intelligence was more widely disseminated between CID and the Intelligence Branch by 2006. According to Mr Phillips, however, the particular circumstances of terrorism in Northern Ireland were relevant and Mr Ayling bore these in mind

in his report. Mr Ayling stated that terrorist groups had developed well-tested methods to obstruct police investigations, including widespread witness intimidation and an awareness of forensic techniques that could be used against them. There was also a problem of public attitudes to the police which made it difficult for the police to obtain information from certain parts of the community in Northern Ireland.

According to Mr Ayling, Special Branch was completely separate from CID and its approach “reflected that of the security services in the UK rather than conventional police forces. The priority for Special Branch was gathering national security intelligence ... There was limited dissemination of intelligence ... to CID ... Special Branch was very concerned about possible exposure of... their sources”. Mr Ayling also stated that “this was the first investigation team to dedicate staff to collusion enquiries and properly firewall them in a collusion cell”.

Mr Ayling stated that an inquiry into due diligence must consider “whether in the circumstances in which it was being conducted, the investigation was carried out properly, reasonably and efficiently by reference to standards prevailing at the time”. To establish what these standards were, he drew on documents produced by the Association of Chief Police Officers (ACPO) – the Murder Investigation Manual (MIM) and the Major Incident Investigation Room Standard Administrative Procedures (MIIRSAP). Mr Ayling also drew attention to the fact that, even where there is a well-run murder investigation, this does not always result in a successful prosecution.

According to Mr Ayling, when Mr Port was appointed by the Chief Constable, he was given a broad remit and extensive authority and he was perceived in the RUC as having “brought with him the wherewithal to get things done”. Mr Port was in overall charge of the investigation. Over 100 officers from across England and Wales were involved with the investigation as well as 75 RUC officers. The investigation had three parts: the murder investigation; an investigation into allegations of collusion; and “Operation George”, which covered a series of covert operations against specific suspects.

The MIM guidelines stated that the priorities at the scene of the crime must firstly be the preservation of life, then the preservation of the scene and securing evidence. According to Mr Ayling, this is what happened at the scene, where police also had to contend with public disorder from the nearby Kilwilkie Estate. Cordons were put in place and Mr Kincaid ordered a fingertip search. Police maintained the scene until 7pm the next day so that officers arriving from Kent could also visit it.

There were five potential incidents of contamination of the scene. The first was that a lorry passed by before police had arrived, driving over debris at the scene. Its tyres were later examined, but with no positive result. The second was that Paul Nelson remained with his wife at the scene, inside the cordon, and removed her handbag and personal things. The third was that the handbag had initially been picked up by a member of the public. A police officer had taken it from him, but did not mention this in his initial statement.

Mr Phillips stated that an important point to draw from this was that members of the public had been milling around inside the cordon at an early stage who should not have been there. The fourth point was that with a police officer kicking an object, which was mentioned above. The fifth point was that a witness stated he had checked under the car for further devices and kicked a number of broken car parts to the verge. This witness did not speak to the police but rather gave his statement to the Pat Finucane Centre. Mr Ayling concluded that nothing more could be done about this and that the murder investigation team could hardly be blamed for any forensic opportunities which may have been missed as a result. Mr Ayling concluded that the standards of due diligence were, on the whole, met at the scene.

Mr Ayling then turned to the structure of the murder investigation team. Two reviews had been conducted and opportunities to re-structure the team to deal with what became a protracted investigation were missed. No “action allocator” was appointed to ensure that actions were prioritised. As a result, some important lines of enquiry were not progressed for a very long time. There was also no clear policy to identify the status of suspects and to focus on particular suspects or to eliminate others from enquiries. There was also no systematic way in which evidence and data was indexed. Mr Ayling attributed these failures to inadequate operating procedures rather than to any lack of effort on the part of staff. However, Mr Ayling considered that given the RUC’s own operating procedures at the time and a lack of training of senior staff, these failures were understandable and the standard of due diligence was met overall.

Mr Ayling considered that there was a good communications strategy both with the family and with the wider public. On the investigation, he believed that victimology – a close focus on the victim and her lifestyle – was essential to prevent assumptions being made that are not robustly challenged in a prolonged investigation. Mr Ayling considered that there were too many unchallenged assumptions in the investigation. Many senior RUC officers did not place great value on victimology.

Mr Ayling found a lack of policy to identify, interview and re-interview witnesses. This could be important as information could often emerge in a later interview after the trauma of the event had subsided. He noted that house-to-house inquiries were conducted on a much larger scale than was usual in Northern Ireland at the time. Whilst no major leads emerged from this work, on the whole it satisfied the standard of due diligence.

There was forensic investigation related to the crime scene, the car and the post mortem. Mr Phillips focused on the scene and the car. A scientific officer examined the scene and concluded that the device was similar to those used in other Loyalist attacks. This linkage became important in determining the direction of the investigation. The car was taken away and preserved for further investigation. There was a delay in sending parts for DNA testing. However, as low copy number DNA techniques were only then becoming available, this was understandable and Mr Ayling considered that, overall, the due diligence standard was met.

A different scientist examined the device and concluded that any link between it and other devices used in other Loyalist attacks was tenuous at best. According to Mr Phillips, there appeared to have been a focus within the investigation team on establishing similarities between the device and other Loyalist devices, whilst downplaying differences. Mr Ayling concluded that the due diligence standard was not met with regards to this line of enquiry. The team concluded that the explosive used was supplied to only one company in Northern Ireland and did not investigate this further as they assumed that company to have a foolproof security system. The detonator was in common use with over 2 million manufactured each year. The tilt switch was relatively rare and Mr Ayling commended the team's efforts (albeit unsuccessful) to track down suspect sales. The device was attached to the car by means of powerful magnets of an unusual kind. Similar magnets were in use at Harland and Wolff shipyard in Belfast and the team presumed that they had come from that source. There was no system in place at the shipyard to track their movements around the yard. This assumption does not seem to have been challenged.

As regards cars used to transport the device, the team investigated possible use of stolen cars and focused on a blue Vauxhall Nova. Mr Port made an appeal for information relating to this car on the Crime Call programme on 19 September 1999. This resulted in two anonymous calls, saying that the car had been used to transport the bomb and naming individuals said to have been involved. However, on further investigation no evidence was found to implicate these individuals. Mr Ayling concluded that this part of the investigation was conducted with due diligence.

Two unnamed witnesses were quoted in an article by Anne Cadwallader in the Ireland on Sunday newspaper on 21 March 1999 who said they would give a statement to an independent inquiry but not to the RUC. Various strategies were employed to encourage these witnesses to come forward. It appeared that one of them was known to Mr Port by October 2000, but the witnesses were not interviewed. Mr Ayling considered this regrettable and judged that this aspect of the investigation was not progressed to a satisfactory standard.

Mr Phillips then turned to Operation George which focused on a small number of suspects and deployed covert surveillance techniques against them as well as approaches by undercover police officers. Mr Ayling considered that this operation came to overshadow the initial investigation and that it appeared to set its own priorities. There was also a lack of legal advice as to what sort of evidence would be admissible in any resulting prosecution. However, while Operation George did not succeed in identifying the killers of Rosemary Nelson, convictions of a number of Loyalists did result.