

ROBERT HAMILL INQUIRY

Days 43- 46: 1st to 7th May 2009

On Friday 1st May 2009, day 43, the Inquiry first heard evidence from anonymous witness P39. The witness was Deputy Senior Investigating Officer for the Robert Hamill murder investigation which commenced on 8th May 2009. Prior to that date, P39 believed that she was supervising DC Irwin whilst he managed the early stages of the investigation (when it was still categorised as grievous bodily harm [GBH] with intent as Robert Hamill was receiving medical treatment in hospital). P39 gave evidence to the Inquiry from memory and based on documents that were shown to her; after retirement she retained her Officer's Journal (as was customary at that time) but subsequently had it destroyed for security reasons.

Inquiry Counsel, Mr Underwood QC, asked a series of questions which showed that the witness asked for the four officers in the Land Rover, three of whom were Reserve Constables, to make statements before they finished their shift and that she briefed these officers before they made their statements. Other officers who arrived at the scene to provide back-up produced statements on Sunday 27th April 1997 and were not briefed by P39.

In addition, Mr Underwood put it to P39 that the Inquiry has heard evidence to the effect that it would have been unusual for Reserve Constables to compile their own statements. P39 explained that she wanted the officers to make their own statements and did not want to control their content, adding that she had asked a detective sergeant on the morning of Monday 28th April 1997 to check with the officers and ascertain if 'any further evidence could be gleaned from them'. Mr Underwood highlighted that Detective Sergeant Bradley did in fact carry out this action but only in relation to the four officers who had been in the Land Rover.

Furthermore, Mr Underwood suggested to P39 that materials provided to the Inquiry appeared to indicate that the Independent Commission for Police Complaints (ICPC) was of the opinion that it was not involved in the potential complaint regarding accusations against Reserve Constable Atkinson. P39 told the Inquiry that she thought the ICPC was involved in supervising the investigation into the Atkinson allegations. P39 believed that in 1997 three investigations were taking place: 1) into the murder of Robert Hamill; 2) regarding the complaint of neglect of duty against officers in the Land Rover; and 3) into allegations that RC Atkinson had been in contact with a suspect (Allister Harvey) and tipped him off. The witness was of the opinion in her statement to the Inquiry that a separate file regarding the Atkinson allegations was to be forwarded to the Director of Public Prosecutions (DPP) and was surprised to learn from Mr Underwood that the file submitted to the DPP which referred to RC Atkinson was the file relating to the neglect complaint.

Questions from Mr McGrory QC, representing the Hamill family, mainly focused on the police procedures that were used to deal with the serious assault on Robert Hamill and the handling of the crime scene. Also, Mr

McGrory suggested to P39 that there would have been sufficient evidence to arrest Stacey Bridgett on Sunday 27th April 1997 as an aggressive man answering to the name “Stacey” had been identified by an officer and a man of similar description had been identified by a witness as jumping on Mr Hamill’s head. P39 told the Inquiry that her decision at the time was to try to obtain more evidence from statements before arresting individuals so that allegations could be put to them in police interviews. Questions asked by other legal representatives covered the evidence of Andrea McKee and Tracey Clarke as well as allegations that Timothy Jameson may have been involved in the assault.

On Tuesday 5th May, day 44, the Inquiry was told by Mr Adair QC, who represents a number of individual police officers, that his client Mr McBurney had died that morning. Mr Adair recounted his client’s desire to attend the Inquiry despite being seriously ill in order to deal with allegations which had been made against him (no specific reference made). Chief Inspector/Superintendent McBurney (as both titles have been used during Inquiry proceedings) was the Senior Investigating Officer on the investigation into Robert Hamill’s murder as well as the investigation which related to allegations that police officers did not get out of the Land Rover at the scene of the assault – often referred to as ‘the neglect complaint’.¹

The first witness on day 44 was Karen Kennedy who was one of two senior police officers who carried out an internal investigation into the early stages of the Robert Hamill murder investigation. This investigation has been labelled ‘the Kennedy report’ by Mr Underwood. Initially, Mr Underwood asked questions about scene preservation and Ms Kennedy explained how serious incidents would result in a scene being sealed off. However in the case of the assault on Robert Hamill, it appeared to Ms Kennedy that the officers probably regarded the assault as ‘a Saturday night fracas’. Inquiry Counsel continued to ask Ms Kennedy questions about various aspects of the investigation. In particular, Ms Kennedy commented that:

- she believed 15 minutes were allotted in each officer’s shift for a debriefing to take place in 1997;
- she would have expected officers on duty who attended the Hamill assault to have made notes in their note books before they went off duty;
- it would not have been acceptable for officers to ‘pool’ their recollections when making statements - instead, other potential witnesses/suspects would have been identified from reading the individual statements that officers made (normally to CID);
- the use of questionnaires to obtain information from witnesses was not commonplace in her experience and in her opinion statements had better evidential quality.

Whilst the investigation that Ms Kennedy was involved in did not encompass the complaint and accusations made against Reserve Constable Atkinson, Mr Underwood also sought her opinion on how such a complaint would be

¹ Transcript of daily proceedings of the Robert Hamill Inquiry, day 50, 15/05/09 P.4 Lines 9-11.

investigated. Ms Kennedy commented as follows:

- that the investigation against the officer would be conducted by CID and would involve the officer being arrested and interviewed and perhaps suspended whilst the investigation was ongoing;
- any criminal investigation against the officer took precedence over any disciplinary investigation; however the Complaints & Discipline Department of the RUC would be informed of the issue at an early stage.

The Inquiry also heard further evidence regarding police procedure and protocols from Mr George Jackson who was the Detective Inspector who assisted Ms Kennedy in her investigations.

On Wednesday 6th May 2009, day 45, the Inquiry first heard evidence from anonymous witness 'G' who was a RUC Reserve Constable. Officer 'G' is one of two police officers (the other being Reserve Constable McCaw) who alleged that Timothy Jameson told them of a 'fracas' in the town centre and that he [Timothy Jameson?] ran past a man and 'put the boot in'.

Note: Both Reserve Constables were acting in the capacity of close protection officers to Timothy Jameson's father who was a construction contractor for the police service and army during 1997.

Questions from Mr Underwood showed that the officers claim they informed DC Irwin about comments they alleged Timothy Jameson made; however Mr Irwin refutes this. In addition, Mr Underwood highlighted the view of a senior officer, Colville Stewart, who expressed concern at the fact that Timothy was not arrested by the officers when he is said to have made these comments. The witness told the Inquiry that he and RC McCaw were aware that CID were investigating the incident and they thought it 'best to take [the] information to them'.

Further questions from Mr Adair showed that the witness did not note Mr Jameson's comments in his notebook. However, a notebook entry was made by officer H recording that witness G had told him that Timothy Jameson had made such comments to another officer. As a result, Mr Adair had the witness confirm that Timothy Jameson made the comments to him and that he did not hear them from another officer.

Ms Dinsmore QC had the witness confirm that RC McCaw frequented premises owned by Michael McKee and on occasions had tea with Mr McKee and his wife Andrea (both of whom are inquiry witnesses). Ms Dinsmore described RC McCaw as instrumental in bringing Andrea McKee's evidence to the investigation.

The next witness to give evidence was Mr Richard Bradley who was a Chief Inspector attached to the Complaints and Discipline branch of the RUC. He gave further evidence regarding police protocol and complaints handling. Mr Underwood had Mr Bradley clarify how complaints would have been investigated in terms of disciplinary aspects and criminal aspects. Mr Bradley

explained that both the criminal and disciplinary investigations into the 'neglect complaint' (i.e. that officers neglected their duty by not intervening when Mr Hamill was being assaulted) would have been conducted simultaneously but that the criminal investigation took precedence. The disciplinary investigation would make use of statements and evidence obtained for the criminal investigation. In addition, Mr Bradley said that he would have expected the complaint that RC Atkinson 'tipped-off' a suspect to be included as part of the neglect complaint and that this did in fact happen.

Numerous references were made to a 17/3 form and the procedure which led to this form being served upon police officers against whom allegations of breaches of duty were made. Mr Bradley told Mr Underwood that he had initially made the decision not to serve a 17/3 upon RC Atkinson as the allegations against him appeared in a witness statement and were hearsay. He accepted that he may have been wrong in taking that decision but reiterated that this was his decision when he first received the complaint file which contained the tipping-off allegation .

During questions from Mr McGrory, it was highlighted that the Chief Constable referred the Hamill case to the ICPC prior to a formal complaint against officers being made by the Hamill family on 7th May 1997. In addition, he conveyed that the Hamill family were not in a position to make a complaint against RC Atkinson individually as they did not become aware of the tipping-off allegations until the case was revisited by the Coroner in 2000. The powers of the ICPC were discussed and in particular the fact that the ICPC could not initiate its own investigation.

Note: The body had to be asked by the Chief Constable to oversee an investigation because a complaint from a member of the public had been made or because the Chief Constable felt that there was a potential complaint or complaints from the public.

It was suggested by Mr McGrory that other witnesses to the Inquiry could help explore the powers of the ICPC and the Chairman indicated that there was potential for a document summarising the ICPC's powers to be prepared for the purposes of the Inquiry.

The final witness on day 45 was John Johnson who had lived in the flat above Jameson's Bar in 1997. Questions from Mr O'Hare QC emphasised that Mr Johnson's evidence to the Inquiry differed from that contained in his statement made on 9th May 1997. Mr Johnston's statement said that he recalled 'something like' an officer trying to help a man lying on the ground; however his evidence to the Inquiry was that he recalled officers around the Land Rover as opposed to helping this individual. During later questions, Mr Johnson indicated that he only saw one person on the ground and that this man was not the individual believed to have been Robert Hamill due to the view he had from his flat.

On Thursday 7th May, day 46, the Inquiry first heard evidence from Mark Ardis who was the scene of crime officer (SOCO). Mr Ardis answered

questions regarding his role and issues such as where the police cordon was, if there was potential for contamination of evidence etc. In particular, questions from Mr McKenna showed that the witness was on call that evening and it would have taken him at least one hour and thirty minutes to arrive at the scene but that this time could have increased if he had to wait for a photographer to become available.

Note: The issue of delays surrounding the preservation and assessment of the scene are important as the scene was not taped-off until 07.27 am (before Mr Ardis arrived) which is over five hours and thirty minutes after events surrounding the assault began.

The second witness on day 46 was Brian Macauley who was Superintendent of New Complaints for the RUC in 1997 and the Investigating Officer regarding the neglect complaint. This role involved receiving and processing all new complaints made against RUC officers and assigning investigating officers to each complaint investigation. Mr Underwood's questions primarily dealt with the processes by which a formal complaint was reported and what would happen if an officer had potentially committed a crime and a complaint was not made about it. Mr Macauley was of the opinion that in the second scenario the issue of an officer's potential criminal conduct would have been dealt with by initiating a disciplinary investigation and as a result the issue would bypass the typical complaints process.

Further questions from Mr Underwood outlined that the only way that new allegations which emerged during the course of a complaints investigation could be brought to the ICPC's attention would be for the Chief Constable to make a referral to the ICPC regarding such developments. In order for this formal referral to have been made, someone would have had to bring the new allegations or issues to the attention of the Chief Constable; however Mr Macauley was unable to indicate who could have done so. Despite no formal referral being made, the Investigating officer for the RUC with regards to the neglect complaint (Mr McBurney) did bring the new allegations regarding RC Atkinson to the attention of the ICPC.

However, Mr Underwood outlined that the only way in which the ICPC could supervise the new allegation was if a formal referral had been made. As a result, from Mr Macauley's evidence it appears that the Atkinson complaint was treated as a continuance of the neglect complaint.²

Mr McGrory QC later asked Mr Macauley if it was 'appropriate or common' that an officer investigating the crime out of which a complaint has arisen should also be the investigating officer of that complaint. This is a reference to the fact that Mr McBurney was a Senior Investigating Officer for the murder investigation into Robert Hamill's death and also appointed as the investigating officer on the complaints investigation which questioned officers'

² Transcript of daily proceedings of the Robert Hamill Inquiry, day 46, 07/05/09, pg.33 line 25 – pg.34 line 2.

actions/inactions regarding the assault on Mr Hamill. Mr Ardis' indicated that he had only come across such appointments on 'a few occasions'.