

ROBERT HAMILL INQUIRY

Day 56: 3rd September 2009

Counsel to the Inquiry, Mr Underwood QC, began proceedings by suggesting where he felt that the Office of the Director of Public Prosecutions' involvement in the Robert Hamill case may fall within the Inquiry's terms of reference. Mr Underwood said that the view being taken was:

"... that the DPP's involvement with the murder investigation may be within the terms of reference in relation to acts or omissions done to the extent that the office of the DPP had a role in the murder investigation, or in relation specifically to prosecutorial decisions to the extent that such decisions shaped the murder investigation."

It appears from Mr Underwood's subsequent explanation that this will depend on the level of involvement of the DPP with the RUC investigation, as he highlighted that representatives of the DPP were involved in meetings as early as 12th May 1997. Mr Underwood proceeded to outline a brief summary of relevant documents and said that it will be necessary to put certain documents to DPP witnesses.

The Inquiry first heard evidence from Gerald Simpson QC who was Senior Counsel in the attempted prosecution of Robert and Eleanor Atkinson and Kenneth Hanvey (father of former suspect Allister Hanvey). He gave evidence to the Inquiry regarding the credibility of Andrea McKee in R v Atkinson et al, a case which came about as a result of Mrs McKee admitting that she provided a false alibi for a telephone call from the Atkinson home to the Hanvey household.

Mr Simpson decided that Andrea McKee should not be put forward as a witness of truth in the Atkinson case as he did believe her reasons for not attending a committal hearing in relation to the Atkinson case. At the time Mr Simpson recorded that he could not find a shred of evidence corroborating her story [which was that she could not travel to Northern Ireland to attend due to her young child being ill – see summary of day 14 of the Robert Hamill Inquiry hearings for further details].

Mr Underwood highlighted documents which stated that Mrs McKee's son had been tended to by their GP on 1st, 11th and 22nd December 2003 and indicated that by the end of 2003 the police were possessed of this information. Mr Simpson did not recall seeing these documents before he made his recommendation regarding the credibility of Andrea McKee and Mr Underwood commented that there was no reason to believe that he [Mr Simpson] had seen the documents in question.

Responses to further questions from Mr Underwood showed that Mr Simpson was not concerned with whether Mrs McKee was telling the truth about her child's illness, but that he was concentrating on whether she was telling the truth about visiting an out of hours doctor's surgery. Mr Simpson indicated that he did not question her credibility in relation to her child's illness but as he was

of the opinion she had lied in saying she had attended Pendine Surgery, the possibility of securing a conviction could be compromised. He highlighted that a lot of time is often spent cross-examining a witness about such a lie and the damage that this would cause at trial *'would be such that she would not be capable of proving the case beyond a reasonable doubt, even taking into account the other matters which you could use to marry up.'*

The Chairman was of the opinion that the consideration of what counsel may be allowed to get away with when cross-examining a witness at trial is not a useful guide when deciding if a person is a witness of credibility or not.

Mr Underwood asked Mr Simpson if it would have affected his advice if he had known the condition made when the adjournment was agreed, and that it had been satisfied. Mr Simpson was reluctant to answer given the number of years that have passed since he gave his advice and said that it might have done so.

Mr Emerson QC, representing the Public Prosecution Service (PPS) [formerly the DPP] returned to Mr Simpson's assessment of a witness who has told lies on a peripheral issue. Mr Simpson said that his experience was that a witness who lied on issues which were not central and then got into difficulties on the main issue will 'simply revert to what they glibly do at the best of times', and added that Mrs McKee was an easy liar and someone that quickly resorted to lying.

Mr Daly, representing Andrea McKee, asked Mr Simpson if it was possible that Andrea McKee was telling the truth: 1) about her son's illness; and 2) about her visit to Pendine Surgery and that the records there were defective. Mr Simpson agreed that Mrs McKee's son appears to have had some sort of illness. However, he did not think she was telling the truth about the visits to the doctor's surgery that weekend and said that unless the whole system had fundamentally broken down [in the doctor's surgery] she was telling lies.

The Chairman queried what importance would have been attached to her plea of guilty when she herself was convicted of perverting the course of justice [arising out of the same false alibi which was in issue in the Atkinson & Others prosecution]. Mr Simpson appeared to view her evidence as very important in terms of her admission that she had previously told lies. He said that if her oral evidence [hypothetically speaking] were to be taken out of the picture, her earlier statements, her conviction and evidence surrounding it, would have been enough to secure a conviction [the witness did not specify whom he believed would be convicted but he was discussing the R v Atkinson & Others case].

The second witness on day 56 was John Devlin, an RUC detective who was involved in the second search on the Hanvey home in May 1997. Mr Underwood asked if Mr Devlin knew why the second search had been conducted and he said he presumed that it was because new information had come to light. In response to a later question from the Inquiry Chairman, Mr Devlin could not recall the search involving looking for evidence of burnt

clothing or a specific item.

Mr Underwood sought Mr Devlin's opinion on whether a debriefing could have taken place on 27th April 1997 after Inspector McCrum had left the scene to perform other duties. Mr Underwood highlighted that Sergeant P89 went back to Portadown police station from the scene and became the senior officer at the station. Mr Underwood asked if a Sergeant would have been senior enough to debrief himself or if Mr Devlin would have expected a detective to have taken P89 through what had happened. Mr Devlin was of the opinion that it would have been sufficient for a sergeant to have debriefed himself or made a statement without assistance from a detective; however his answer indicated that when the investigation into the attack on Robert Hamill became a murder investigation, this approach may not have been seen as sufficient.

Mr Devlin was also involved in an investigation in 2000 which uncovered ATM records showing that Allister Harvey withdrew money from his bank account at 8:00 am on 27th April 1997 in Portadown town centre. Mr Underwood asked Mr Devlin if he thought it reasonable to have expected detectives to look at such records in 1997. Mr Devlin explained that whilst the powers he used to gain the records would have been in place in 1997 under PACE regulations, it wasn't until the introduction of money laundering investigations that financial investigations became a more obvious line of inquiry from around the year 2000.

Mr Devlin was also involved in an interview of Andrea McKee in 2000 with DCI 'K', in which Mrs McKee admitted providing a false alibi for the alleged Atkinson tip-off. When asked, Mr Devlin told the Inquiry that his impression of Mrs McKee during the interview was that she was truthful.

The Inquiry also heard evidence from a taxi driver who picked-up a fare on the 27th April 1997. His passengers were witnesses P133 and P132 who are husband and wife. On the night in question they left St Patrick's Hall and remember seeing a Land Rover in the town centre but no fighting and no one in the vicinity. The taxi driver alleges that when he collected his fare the passengers told him they had been chased and that the man wanted to go back into the town. However both P133 and P132 maintained that they did not say they were chased. P133 said that the taxi driver must be mistaken in his recollection.

The final witness on day 56 was Colville Stewart, a Detective Chief Superintendent (DCS) who joined the investigation into Robert Hamill's murder and took over responsibility for the investigation.

Mr Underwood began his questions by drawing the witness's attention to a gap in the murder investigation policy files between 30th May 1997 and 28th June 2000. In his statement to the Inquiry, Mr Stewart said that the use of policy files and sensitive policy files was standard procedure in the RUC in 1997. Mr Underwood indicated that the Panel may have to consider due diligence on the part of the investigators and that they needed to satisfy themselves if it were legitimate not to follow that procedure or whether that

procedure was obligatory. Mr Stewart believed that keeping a policy file was obligatory and normal practice. He could not think of a reason for not keeping policy files.

Mr Underwood also referred to Mr Stewart's feeling that an intrusive surveillance in the Atkinson home in 2000 would become 'undone' and asked the witness how sure he was of this. Mr Stewart explained that he was of the opinion that covert surveillance should have taken place before the arrest of RC Atkinson in hope that he would not be aware of it [as Mr Stewart's statement records RC Atkinson being suspicious that he was being watched].

Further reading of Mr Stewart's statement showed that he was of the opinion that RC Atkinson should have been suspended in May 1997 when the allegations against him came to light although he was aware that the arrest of RC Atkinson may have prejudiced the case [Tracey Clarke may not have attended court to give evidence]. Mr Stewart clarified this section of his statement by saying that he would have reported RC Atkinson to the Deputy Chief Constable and recorded his concerns in that report, as he [Mr Colville] did not have the authority to make a suspension. Mr Stewart added that he would have used the telephone records from the Atkinson home to support Tracey Clarke's claims in a report and that whilst he would have done this on paper so there was a paper trail, he understood that Mr McBurney did do this [presumably the witness means reported concerns he had if RC Atkinson were arrested] but verbally.

In response to questions from Mr McGrory QC, representing the Hamill family, Mr Stewart explained that a sensitive policy book was in essence a policy book that contained information that could compromise an investigation if it were contained in a standard policy book to which more people had access. Mr Stewart was also of the opinion that if he personally had considered an arrest and then decided against it, this was the sort of information that he would have recorded in a policy book.

Ms Dinsmore QC, representing Robert and Eleanor Atkinson, asked additional questions about the surveillance on the Atkinson home. Mr Stewart explained that as he was new he did not question the approach taken. He said that the Ombudsman [although the Police Ombudsman was not yet in place and the supervisory body was actually the ICPC] preferred the intrusive surveillance to be put in place at the time of arrest and that DCI K [Deputy SIO of the investigation in 2000 and later became SIO] was unhappy with this approach and wanted surveillance to be in place before arrests were made. Mr Stewart said that at that time they were working to the Ombudsman. He said that Mr Wood of the Ombudsman's office was adamant on how the surveillance should be done against his [Mr Stewart's] advice and that of his Deputy, DCI K.

Mr Emerson QC, representing the PPS, asked questions regarding a meeting that Mr Stewart attended with DCI K and Mr Kitson of the DPP on 28th February 2001. Mr Stewart told the Inquiry that the purpose of the meeting was to discuss Andrea McKee's potential suitability as a witness. From

responses to further questions, it appears that Mr Stewart was of the opinion that Mrs McKee was to be prosecuted for providing a false alibi and that prosecution was never in question.