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NO NEW EVIDENCE KILLING WAS DELIBERATE BUT USE OF BATON GUN WAS UNJUSTIFIED: POLICE OMBUDSMAN.

Monday, 16 April 2007

A Police Ombudsman investigation into a fatal shooting of a boy on 15 April 1981 in Derry / Londonderry, has not uncovered any additional evidence that there was an intent to unlawfully kill, or to cause grievous bodily harm. The Director of Public Prosecutions, having re-considered the matter, has directed no prosecution of the police officer who fired the baton gun.

The shooting of 15 year old Paul Whitters happened during rioting, which had continued for much of the day. The baton round was fired at Paul, hitting him on the head. He died from his injuries ten days later. However, the Police Ombudsman, Mrs Nuala O'Loan, has said that, while her investigators identified evidence to suggest that the baton gun used may have misfired, and that the baton round itself may have malfunctioned, the shooting of Paul Whitters was unjustified. The Police Ombudsman has also substantiated the family's allegations that police did not try to arrest Paul, that they did not conduct a proper investigation into his death, that they did not keep the family updated about the investigation, and that there was no attempt by police to interview six individuals who gave statements to a solicitor about the shooting.

"We have found no new evidence that the police officer who fired the gun intended to kill Paul. In my view, the firing of the baton gun on that occasion was wrong and unjustifiable. The gun was used in contravention of the rules in place at the time. No warning was given by loudhailer, and it was fired at less than the permissible range of 20 metres. The police justification for the shooting was that the baton gun was used to prevent a lorry being hijacked, and they said that the rules permitted this. We have found no evidence that Paul intended to hijack the lorry, or that the safety of officers was at risk. Police officers did not say that the gun was fired because there was a serious risk of injury to anyone", said Mrs O'Loan.

His death was the subject of an inquest, and was referred to the Director of Public Prosecutions, who directed no prosecution. In 1986/7 the RUC settled a subsequent civil action without any admission of liability. Although complaints to the Police Ombudsman are normally limited to incidents alleged to have happened within the preceding 12 months, the Police Ombudsman undertook this investigation because of the gravity of the allegations. Mrs Nuala O'Loan, described it as a long and difficult investigation. Her investigators sought to establish if there was 'significant new evidence' not previously available to the Coroner or to the then Director of Public Prosecutions.

"Initially, we had difficulty in tracing key witnesses and documentation but, after a lot of painstaking work, were successful. There were other difficulties, however. The solicitor who handled this case for Paul's family has since died, as has the Coroner. The Ministry of Defence was very slow in responding to our requests for information and Paul's hospital records have been destroyed. The police officers to whom we wanted to talk, have retired and for the most part either refused to speak to us or stated that they had nothing they could add. The officer who fired the gun refused to speak to us and could not be compelled to do so in the absence of new evidence", she said.

The shooting happened near a bakery in the city's Great James Street. Police had been deployed in the bakery yard to prevent rioters getting into the premises. As the evening wore on a lorry arrived at the bakery to make a delivery. Its driver, together with the bakery security guard, set about unloading the vehicle. There are conflicting accounts as to what happened next. It is known that, at some stage, police saw a number of youths (variously described as between 3 and 25, but described by the security guard as being 12 in number) who were rioting. The evidence is that they were throwing stones. The only evidence of damage to any property, as a consequence of the incident, was a couple of broken windows. There was no damage to the lorry. Police were told by the security guard that the lorry was about to be hi-jacked. The security guard stated that he had heard the boys shout, 'Can anyone drive?', 'hi-jack' and 'are the police in there?'

Police came to the gate of the bakery and the inspector on duty ordered an officer to fire at Paul Whitters, who was in front of the other youths and was described by police officers as the lead rioter. The officer fired, hitting Paul on the forehead. Police had made no attempt to arrest Paul or any of those with him. Police Ombudsman investigators traced the security guard and the lorry driver, but neither of them were able to add to the evidence they had already given. One of the boys who had been in the area that day came forward and gave evidence.

The investigators also traced and spoke to an independent scientist and weapons expert who had been hired by the family as part of their civil action. Mrs O'Loan described his evidence, which was not available to the DPP or Coroner, as compelling. Although the Forensic Science Service of Northern Ireland examined the weapon at the time and found no fault with it, the independent scientist said that when he tested it four years later by firing it 35 times on an RUC firing range, the majority of the shots hit 20 inches high from targets he aimed at. "The scientist concluded that if the police officer aimed for Paul's head he would probably have missed. The fact that the baton round hit the head suggests the police officer probably aimed at the lower part of the body. This evidence, combined with evidence of eyewitnesses that Paul was stooping down and standing up again introduces reasonable doubt as to whether the police officer fired at his head", she said.

POOR INVESTIGATION.

The Police Ombudsman has upheld the family's complaint that the police did not conduct a proper investigation.

"My investigators took into account the realities of everyday policing in the city at that time and the difficulties of conducting inquiries. There is evidence that police officers had very heavy workloads, and were required to perform long shifts, often in very dangerous and stressful situations. However, even taking that into consideration, it is clear that the senior officer took statements only from the police officers, the security guard,



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the lorry driver and one other person, and stated at the inquest that he was satisfied he had the full story. He did not take statements from eyewitnesses. He did not think it necessary to make inquiries in the neighbouring houses nor give valid reasons why he did not do this, Mrs O'Loan said.

When the police became aware of seven new statements, which had been made to the Whitter's family solicitor, they did not follow them up as investigative leads. Police simply presented them to the Director of Public Prosecutions, who considered the matter afresh, but did not change his view. The police officer conducting the investigation stated, in a written report to senior officers, that he had approached all seven, and that they had declined to make further statements to him. He stated that he felt that they did not want to speak to him because they were afraid there were inconsistencies in their accounts. "In the absence of a full account from this police officer, and based on the evidence from the files and the statements obtained as part of this investigation, I must conclude that the investigation was not done properly", said Mrs O'Loan.

The Police Ombudsman upheld, in part, a complaint that police officers lied: "I am aware the police officers all gave evidence that the shot was fired at a range of at least 20 metres, whilst other evidence shows that this could not have been the case. However it is not possible to state categorically that these officers lied, particularly given the difficulty of calculating distances in the particular circumstances, which was described by the Coroner and the independent forensic scientist. However, I have also noted that the police officer in charge of the investigation informed his senior officers in writing that he had spoken to the seven people who had supplied new witnesses statements, and said they had declined to make further statements. Six of those people have told my investigators that they were not approached by the police. The seventh person said he could not remember being asked to make a statement", she said. Mrs O'Loan also upheld the family's complaint that police did not keep them updated as to the progress of the investigation.

Baton rounds used at the time had metal seals, known as 'end caps' fitted to the tip to allow for the discharge of gases built up before firing. These end caps were supposed to drop away from the baton round after it had been fired. Scientists found a mark on the mask worn by Paul Whitters, which they believed may have been made by an end cap which had not fallen off. Police Ombudsman investigators have confirmed that in February 1982 a Northern Ireland Forensic Science representative told police that, in tests, certain batches of baton rounds consistently failed to lose their 'end caps' when fired, raising concern as to whether such a problem could add to the possibility of serious injury or death.

"The investigators also established that the issue had previously been discussed at a meeting in September 1981, after Paul's death, between senior police officers, the army and the Chemical Defence Establishment. There were initial suspicions that details about these problems were withheld from the DPP or the Coroner but I am now satisfied that all evidence was made available", she said.

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