

Judicial Communications Office

10 June 2019

CORONER FINDS INVESTIGATION INTO DEATH OF DANIEL CARSON IN 1973 WAS “FLAWED AND INADEQUATE”

Summary of Findings

Mr Justice Colton today delivered the findings of the inquest into the murder of Daniel Carson on 1 November 1973. He said there was no evidence of any State involvement in the murder or of any collusive activity prior to or subsequent to the death. He did, however, conclude that the investigation into Daniel Carson’s death was flawed and inadequate.

Background

Daniel Carson was shot dead on 1 November 1973 shortly after finishing work in a warehouse on Dayton Street, close to the lower Shankill in Belfast. Statements were taken by police from a number of persons who were at or near the scene of the shooting. One of the witnesses, who was a work colleague of Mr Carson, known as Witness A, told the police that she recognised the gunman as a person referred to as S1. Statements were also provided to the police by three military witnesses who called at the house where S1 was living on the day of the attack after hearing his name being mentioned by members of the public. S1 was arrested by the police on 5 November 1973 and his house searched, but nothing was found. Witness A attended the police station that evening with her father to express their fear that should it be known that she named S1 she would be murdered to prevent her giving evidence. S1 was released from custody the following day and no person has ever been charged in relation to the death.

An inquest took place on 18 June 1974. It heard that Mr Carson got into his car shortly before 17:30 and travelled a short distance when a man, standing at a junction in the road, fired a number of shots at him. One of the shots penetrated the glass of the driver’s door and struck Mr Carson in the head. The car then crashed into the garage doors of a car sales company. Mr Carson was taken to hospital but was certified dead at 17:45 hours. The pathologist found that he died as a result of a single gunshot wound of the head which caused a brain injury of a severity which would have caused immediate unconsciousness and rapid death. The inquest recorded an open verdict.

In 2004, the case was reviewed by a PSNI Serious Crime Review Team (“SCRT”). The SCRT report considered that evidential opportunities had been lost by the army calling at S1’s house without arresting him or liaising with the police as there was nothing of evidential value present. The report also recorded that Witness A had attended the police station on the day of S1’s arrest to express her fear about naming him. The report stated that “after discussion with the then Divisional Commander ... [the relevant police officers] were satisfied she would have been killed and on that basis S1 was not charged”. An investigator in the SCRT called with Witness A in September 2004 and she was noted as “[giving] the impression that she had more than reasonable doubt about her original identification of S1 and later changed her mind about his being involved”. A senior officer in the SCRT recommended that the investigation be referred to a Senior Investigating Officer for full investigation and that even if Witness A maintained her position a report to the DPP would be required. The Coroner noted that as far as he could glean from the papers, a report did not issue to the DPP but the case was forwarded to the HET in 2005.

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A review was carried out by the Historical Enquiries Team (HET) in the period from 2006-2010. In the course of the review, two officers from the HET interviewed Witness A about the incident and her original statement. She made a further witness statement on that date saying: "I think now that I may have been mistaken that it was S1. The man was the same build as S1 but I couldn't now say 100% that it was him". Witness A also recalled an incident a few weeks later when she was approached by a man she described as an uncle of S1. He called her by name and said something like "Our S1 is like a big child, he wouldn't have it in him to hurt anybody". This made her nervous as she got the impression he had been watching her and waiting for a chance to speak to her.

The conclusions of the HET's initial Review Summary Report in 2008 stated that Witness A had failed to confirm the identity of the gunman, and commented that actions by the Army immediately after the shooting in all likelihood terminated any realistic chance of finding evidence and a subsequent conviction of the suspect. It concluded that there were no further avenues of investigation which could be proceeded with by the HET to locate those responsible for Mr Carson's murder. In June and July 2009, the HET produced two further Review Summary Reports. Questions from the deceased's family resulted in correspondence from the then Director of HET stating that there was no reasonable prospect of further work resulting in realistic evidential opportunities and that no further HET resources could be committed. A recommendation was made by a reviewing officer that an advice file should be prepared for the PPS to enquire whether a prosecution might be possible but it was not supported at senior level having regard to the state of the evidence in the case.

A submission was made to the Attorney General on behalf of the next of kin in 2012 that he should exercise his powers under section 14(1) of the Coroners Act (Northern Ireland) 1959 ("the 1959 Act") to direct a fresh inquest. The Attorney General did so, referring to the limitations of the previous inquest, notably the absence of any consideration of the evidence of Witness A.

The Inquest

The scope of the inquest is set out at paragraph [93] of the findings. The substantial issue to be considered was "how" the death was caused. The Coroner granted anonymity to Witness A and S1 and ruled that they could give their evidence screened from the public but visible to the next of kin of the deceased.

It is settled law that an inquest cannot attribute blame or make findings of civil or criminal liability. Nor can an inquest in Northern Ireland return a verdict of unlawful killing. An inquest is an inquisitorial fact-finding exercise and not a method of apportioning guilt. The Coroner stated that, in his view, Article 2 of the ECHR is engaged in that it requires the State to have in place the necessary judicial mechanisms to provide for an effective investigation into the death of Mr Carson. To be effective, such an investigation must be capable of establishing the cause of death and of identifying the person(s) responsible. Nothing in the 1959 Act or Rule 16 of the Coroners Practice and Procedure Rules (Northern Ireland) 1963 ("the 1963 Rules") prevents the coroner finding facts directly relevant to the cause of Mr Carson's death which may point very strongly towards a conclusion that criminal liability does exist or does not exist. The standard of proof in an inquest context requires that any fact has to be proved to the civil standard, ie the balance of probabilities.

S1's suspected involvement in the death of the deceased

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The basis for S1's suspected involvement in the death of Mr Carson arose from the identification of him as the gunman by Witness A. She told the police that she had known S1 for about five years at the time and claimed that in conversations he had made derogatory comments about Catholics, including "There is one left in your place but he'll run when he sees the rest running". Witness A understood S1 to be referring to Mr Carson. The Coroner said the following about Witness A's initial police statement:

"On any reading [Witness A's statement to the police of 2 November 1973] is an exemplar of a convincing identification statement. It is a statement of someone right at the centre of the event she is describing. Her account is told with clarity. It conveys the horror of the unfolding events and is impressive in its detail. Witness A acted with great bravery and compassion, confronting the gunman and placing herself in danger as she ran towards the deceased's car. It appears she actually shouted out S1's name as she did so. What she says about the incident corresponds with the known facts about what happened."

The identification statement was supported by what Witness A said to other people on the night in question. The deceased's widow also gave evidence that Witness A had informed her that she had seen her husband's killer and was confident that she knew him and could identify him. Mrs Carson remembered Witness A making a striking comment: "We will get him for you Anne". The Coroner said he had no doubt that this was an accurate and truthful account of the conversation.

The police officer in charge of the murder investigation was Detective Inspector Nesbitt (now deceased). The Coroner said that his death had deprived the inquest of a significant source of information as his role was of central importance in assessing the issue of Witness A's reliability and the conduct of the RUC investigation. His absence meant the court had to rely on second hand accounts of his actions. The Coroner referred to a note of a meeting that Detective Superintendent Nesbitt (as he later was) had with the SCRT in 2004. He told the Team he had discussed Witness A's statement with the then Divisional Commander and "they were satisfied she would have been killed and on that basis S1 was not charged". The Coroner also referred to DS Nesbitt's meetings with the HET in 2006 and 2009 where he was noted as saying "This was a straightforward case. Suspect 1 was the killer and he would have been convicted but the witness retracted her statement".

Counsel for the next of kin disputed that Witness A did in fact retract her statement as there was nothing recording this on the police file. Counsel was also very critical about the matter in which a member of the SCRT interviewed Witness A. The Court heard that he did so alone without authority from senior officers and did not appear to have been aware of why the matter was not pursued in 1973. He also did not supply Witness A with a copy of her statement from 1973. Witness A was subsequently interviewed by the HET in 2007. At this time she thought she may have been mistaken that the killer was S1 and said "it would surprise me if he would be capable of the shooting". Counsel for the next of kin was also critical of the approach taken by the HET, and in particular claimed there was no effort made to approach Witness A as a vulnerable witness with a view to facilitating her giving evidence.

The Coroner then turned to the evidence given by Witness A at the inquest. He said she accepted she made the statement of 2 November 1973 but sought now to distance herself from it by saying that she "didn't really know the guy, it's down [in the statement] that I did, I didn't really know him, despite talking to him from passing at the corner". The Coroner said that when it came to the detail of what took place, Witness A was "vague" and had difficulty remembering the particulars of the

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murder. For the first time she referred to the gunman as wearing a mask. When pressed about her confident identification in 1973 she replied that she thought it was S1 because of his build "but when the detectives told me I was wrong, that it couldn't have been him, I just put it out of my head then, I just thought it wasn't him". Witness A said she could not recollect speaking to a soldier in the aftermath, or visiting the deceased's home, or making the statement which was recorded by DI Nesbitt or of going to the police station in the circumstances described by DI Nesbitt to the SCRT. When asked about the circumstances which gave rise to her understanding that S1 had an alibi she said she was told this by "a detective who visited her workplace" but added "I remember being told it but I can't remember where or when I was told it". She claimed this conversation put "the first seeds of doubt" into her mind about whether she had made a correct identification. She said this was reinforced when a member of the SCRT visited her and said "Ay yeah, you're unreliable because it couldn't have happened".

The Evidence of S1

S1 was arrested on 5 November 1973. The Court was shown a handwritten note of his interview with DI Nesbitt and his subsequent statement which was taken by DI Nesbitt on 6 November 1973. The Coroner was told that S1 has a working diagnosis of schizophrenia and diabetes and a history of depression and extreme anxiety. S1 told the court that he had very vague memories of being in the police station in 1973 and did not remember making any statement. When asked whether he accepted that the record of the interviews was accurate he replied: "I was there, it must have took place, it must have took place but I can't remember making a statement 43 years on, I can't remember doing it". When the contents of the police note to the effect he was released on 6 November was put to him he said he did not remember walking out of the police station: "I don't remember walking out with DI Nesbitt although Johnny McQuade was there". Johnny McQuade was a local Unionist politician. S1 said his brother had done work for Mr McQuade and came to the police station with him but he couldn't recollect when this was. S1 said he was not spoken to again by the police about the murder. The Coroner commented:

"Overall the evidence of S1 was very unproductive. It may well be that a combination of his medical condition and the passage of time explain the vagueness of his answers. My view is that it is very difficult to place reliance on S1's evidence."

The Involvement of the Military at the Scene and post-1973

Sergeant Major Ebbens (now deceased) made a statement to the police on 2 November 1973. In this he said a person at the scene had told him that Witness A had said the gunman was S1. He then contacted Major Money Penny and they went to the address they had been given for S1. When he asked S1 where he was at the time of the shooting he replied that he was "lying asleep on the settee watching television and had fallen asleep". Sergeant Major Ebbens then went to an address at which Witness A was present. He asked her if she could help and if the name S1 meant anything to her. She answered "No". Sergeant Major Ebbens spoke to Witness A's father outside the house and advised him to contact the police should Witness A be able to help.

The inquest took evidence from Major Money Penny. He had made a statement to the police on 18 January 1974 but indicated at the inquest that he could not remember this. In his evidence he described the visit to S1's address. He said he remained at the front door when Sergeant Major Ebbens spoke to S1 but that he could see and hear everything. In February 2010, the HET spoke to both Major Money Penny and Sergeant Major Ebbens. At the time it was noted that the retired Major

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had no recollection of the incident and that Sergeant Major Ebbens had only a very vague recollection and could not recall speaking with any suspects or witnesses.

The Coroner said he could only assess the conduct of the soldiers on the basis of their statements given in 1973 and 1974. He commented that there was inadequate cooperation and liaison between the military and the RUC at the scene and that it appeared that Major Money Penny, on hearing the information provided by Sergeant Major Ebbens, decided to unilaterally visit S1's home. The Coroner said that steps should have been taken to search the route from the scene of the murder to S1's address. He noted that both of the soldiers' statements indicate that S1's sister initially said that he had not been home at the time of the shooting:

"The statement of Major Money Penny suggests that in fact S1 actually arrived at the house after they had spoken to his sister rather than emerging from within the house. If this is so then this would lead to further suspicion about the veracity of S1's account. The soldiers' visit was in the immediate aftermath of the murder when evidential opportunities were at their height. S1 had been named as the murderer. Sergeant Major Ebbens noted that he presented as nervous. The soldiers had the power to arrest S1 on suspicion of murder and to search his person and the premises. A search at this time was the best opportunity to establish whether or not there was a gun in the premises. It would also have provided an opportunity to seize any clothing S1 had been wearing at the time. Had S1 been arrested it would have been possible to carry out forensic tests on his person at the police station or his place of detention. If the soldiers were not minded to do this it should have been a straightforward matter to liaise with the RUC and arrange for the police to attend immediately at the premises. By failing to take any further steps at the time of having spoken to S1 evidential opportunities were lost to those investigating the murder. In addition S1 was on notice that he was a potential suspect which meant that if he was involved he had both the incentive and the opportunity to dispose of any evidential material, be it the gun or other forensic evidence that would have assisted in the investigation."

In his evidence, Major Money Penny was unable to recall why there was a delay in making his witness statement. Whilst he found it difficult to accept that he would have refused any request from the police he simply had no memory of these events. The Major indicated that he generally had no dealings with police and did not tend to communicate with them directly. Instead he passed relevant information to the military chain of command on the assumption that it would make its way to the police.

The Police Investigation

The Coroner said it appeared that the RUC were made aware of the fact that S1 had been named by a witness as the gunman but there was no evidence as to what, if anything, they did with the information. He said it did not appear that any attempt was made to identify S1's address or take steps to find him on the night of the shooting or that the RUC were involved or consulted about the decision of Major Money Penny and Sergeant Major Ebbens to attend S1's home. He said there was also no note or record of the passing of the information about Sergeant Major Ebbens' conversation with Witness A and her father later that evening.

The inquest heard from a witness who was a Detective Constable at the time. He confirmed that the police became aware the Army had interviewed S1 and said "it was pointless us trying to do

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anything as they were a law unto themselves". He recalled that a Detective Chief Inspector "nearly hit the roof with regards to Army actions with the suspect". He felt it likely that the DCI would have completed a "duty statement" but none was traced for the purposes of the inquest. Another constable gave similar evidence. The Coroner said the totality of the evidence tended to suggest that the RUC was aware of the fact that S1 had been identified by a witness on the night of 1 November 1973:

"What is beyond doubt is that on 2 November 1973 the RUC was plainly aware of the identity of S1 because of the statement from Sergeant Major Ebbens and also of Witness A's statement. Despite having that knowledge, S1 was not arrested until the morning of 5 November 1973. This delay compounded the difficulties created by the actions of the military on the night of the shooting. At the time of his arrest S1 would have been aware he was a person of interest to those investigating the murder. Potential evidential opportunities were lost at that point and the investigation was therefore compromised. I can see no justification for the delay between the receipt of the statements from Sergeant Major Ebbens and Witness A on 2 November and the arrest of S1 on 5 November. Nor was any provided in the course of the inquest."

The Coroner commented that it was also not clear whether the police searched S1's home when he was arrested. A Superintendent's search order was obtained on 5 November 1973 authorising a search of S1's premises but there was no evidence whether the search took place and there is no note or record relating to the seizure of any items. In his evidence S1 said that he did not recall a search. The Coroner commented that it was difficult at this stage to come to any conclusion as to whether a search was conducted. He said the obtaining of the Superintendent's order and what DS Nesbitt told the HET pointed towards a search but the absence of any subsequent records suggested that in fact nothing was removed from the house: "Given the delay in the arrest of S1 it is doubtful whether anything of value would in fact have been found in the course of a search."

In terms of the interview of S1, the Coroner said the court can only rely on the cursory notes of the interview. It did not appear from the notes that Witness A's account was actually put to S1, nor was it put to him that he had actually been identified by a witness at the scene. The Coroner said it may be that this was influenced by the police's desire to protect Witness A. Whether Witness A or members of her family had visited the police station and indicated this to the police was a matter of substantial dispute in the course of this inquest. There was no statement from Witness A on the file withdrawing her previous statement and no note to record her attendance or that she had in fact retracted her statement.

S1 ultimately did make a statement denying any involvement in the murder on 6 November 1973. However, that statement contradicted earlier accounts that he had given when questioned about the matter. Despite this he was not questioned further about these contradictions. The Coroner said that no attempt was made to interview S1's sister about the circumstances in which he returned home and what was said to the military witnesses who spoke to them on the night in question or to interview S1's brother. The Coroner noted the unexpected disclosure by S1 in the course of his evidence that he was visited by his brother and a local Unionist politician Johnny McQuade whilst he was in police custody, although he was extremely vague about the circumstances of the visit and when it took place. The Coroner commented that there is no record of any visit in the limited documents relating to S1's time in custody. The next of kin were very critical of this which they said was highly unusual and inappropriate.

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The RUC did not appear provide the original inquest with any of the material from Witness A or the other witnesses who mentioned Witness A's identification of S1. It was this apparent failure which prompted the Attorney General to direct a further inquest. The Coroner said it was also appeared that no advice was sought from the DPP as to what steps might be taken in relation to the potential prosecution of S1 given the original unqualified identification of him by Witness A.

The court heard evidence from DC Elliott who had been involved in the investigation and took the notes of the interview which had been conducted by DI Nesbitt. He had no express recollection of the murder or the investigation but was particularly keen to point to the considerable reputation of DS Nesbitt and endorsed the comments in the Belfast Telegraph reported that in the course of his career he had investigated 311 killings and solved 250. When pressed about the circumstances of the investigation, Mr Elliott felt it entirely plausible that DI Nesbitt and the Divisional Commander would have taken the decision that the threat to Witness A's life was very real if she decided to give evidence against S1. He said it was not unusual for someone such as Mr McQuade to have visited the suspect whilst in custody. Whilst he did not consider that such a visit was prohibited by the Judges' Rules (which governed the interviewing of suspects at that time), he could not remember if in fact Mr McQuade had visited S1. He rejected any suggestion that the permission to grant such a visit would be motivated by any sectarian factors.

Coroner's Assessment of Witness A and S1

The Coroner said there were obvious difficulties about the evidence of Witness A and S1. Both were reluctant witnesses and the court granted them anonymity and some special measures to facilitate them giving evidence. They were giving evidence about an incident which occurred over 40 years ago and were both vague about important matters. S1's situation was exacerbated by his medical condition which threatened his ability to give evidence in the inquest at all.

Turning firstly to Witness A, the Coroner said her conduct at the time of Mr Carson's murder was truly courageous:

"Her instinctive reactions are an example of the best of human nature. Her only concern was for the welfare of Mr Carson of whom she was clearly very fond. She was fearless in confronting the gunman and going to the assistance of Mr Carson in truly frightening and dangerous circumstances."

The Coroner said her identification of S1 was compelling. He said the circumstances of the identification and the detailed statement made by Witness A the day after the murder was a paradigm of a reliable identification:

"She knew S1. She was able to refer to specific and recent conversations with him which related to Mr Carson. She called his name out at the scene and confirmed the identification to others who were there at the time. The detail of what she describes was consistent with what other witnesses observed. The Coroner said the final paragraph of her written statement at the time was compelling¹."

The Coroner commented, however, that when she gave evidence before the inquest Witness A presented a very different picture as she sought to distance herself from her original statement and

¹ Paragraph [263].

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was clear that she was no longer sure about her identification. The Coroner said he had come to the conclusion that Witness A became fearful for her safety shortly after she made her statement to the police and that fear has persisted to the present day. He said this was entirely understandable bearing in mind the circumstances of the time as she was the sole and decisive witness and it was widely known that she was the person who had identified S1. The Coroner accepted that she had been approached by a relative of S1 shortly after she made her statement to the police. He said the brutal and callous way in which Mr Carson was murdered was illustrative of the brazen and casual manner in which sectarian killers operated in Belfast at that time: "The murderer acted with apparent indifference to the fact that there were many people in the vicinity at the time of shooting, confident that no one would be brave enough to point the finger at him."

Witness A's evidence was that the seeds of doubt about the identification of S1 arose because she was visited by a police officer sometime after the shooting when she was told that in fact S1 had an alibi. She was unable to say who that officer was and was vague about the circumstances in which this occurred. The Coroner said it was clear from the papers that S1 did not have an alibi. The Coroner noted, however, that there was no record from the SCRT or HET inquiry of Witness A raising the issue of a potential alibi as the basis for any doubt in her mind about the identification. Nonetheless, if in fact Witness A believed that there had been an alibi for S1 the Coroner consider it likely that this was something she would have raised and would have been recorded, particularly by the HET. Nowhere in her statement to the HET did she raise this as an issue. She simply said that: "I think now that I may have been mistaken that it was S1. The man was the same build as S1 but I couldn't now say 100% that it was him." The Coroner noted that the first record of any suggestion that Witness A was under the impression that S1 had an alibi was in the letter received by the Coroners' Office on 19 December 2016. In that letter she wrote: "After the police had completed their enquiries they informed me that my statement was unreliable as the person I had implicated had established an alibi which confirmed that he could not possibly have been on the Shankill Road on the date of this incident."

The Coroner said he had formed the impression that Witness A was in fear for herself and her family after she made the statement and that since that time she has sought to distance herself from the certainty of her identification and has sought to justify this in her own mind. He said he was satisfied that contrary to the evidence she gave at the inquest Witness A did in fact make the comments attributed to her by Mrs Carson and Ms Graham in the aftermath of the murder. Equally he was satisfied that Sergeant Major Ebbens did speak to Witness A's father and that her unwillingness to identify S1 at that time was an indicator of the understandable concern she felt. The Coroner said these factors suggested that Witness A has great difficulty in facing up to the very firm identification she made at the time.

The next of kin challenged whether DI Nesbitt was correct in his assertion that Witness A and her family came to the police station when S1 was being interviewed expressing fear and concern about her safety. The Coroner said there was no record of this important development and questioned whether it was likely that Witness A would express these fears to the police on either 5 or 6 November in circumstances where she had attended Mr Carson's funeral on 5 November and had given the assurance to Ann Carson in the days before the funeral? He said this must have been a very difficult time for Witness A as she would have faced conflicting emotions about her desire to hold the murderer of her friend to account and the concern for her safety and the safety of her family: "Overall I am satisfied that Witness A and her family did express their fears to the investigating officer and that this coloured everything that was done thereafter in terms of the investigation."

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The Coroner said that in this regard an analysis of what DI Nesbitt told the SCRT and HET was important. His first account in 2004 was that Witness A attended with her father and other family members to express their fear that should it be made known she named S1 she would be murdered to prevent her giving evidence. The Coroner noted that he did not say that she formally withdrew her statement. By March 2009, however, he referred to a witness “retracting” her statement but it was not clear that he was saying that a withdrawal statement was made. The Coroner said it was clear from the outset that there was a concern about identifying Witness A as she was given a cypher from the outset.

The Coroner noted that nowhere in the papers was there any record to suggest that anyone in the RUC took the view that S1 had an alibi. He said it was significant that the Carson family were told by the RUC shortly after the murder that Witness A was unwilling to give evidence. He said it may well have been suggested to Witness A that S1 had an alibi and that this may well have gained currency in the area and may even have been reinforced by a police officer to provide some sort of comfort to Witness A. The Coroner commented, however, that he could not be satisfied on the basis of her evidence that this was something that was expressly communicated to her against the background where she was willing to maintain her statement and give evidence against S1. He said that having heard all the evidence in the case and considered the papers he had come to the conclusion that DI Nesbitt was in fact correct when he said that the identification was never in doubt.

The Coroner then assessed S1. He said there were clear issues about his memory and his health and obvious reasons why his evidence was not reliable. He was unwilling to answer questions which might have incriminated him. One matter, however, that did arise in his evidence was the issue relating to the visit of a Unionist politician Johnny McQuade and his brother whilst he was in custody. He was extremely vague about the circumstances surrounding this visit. The Coroner said it was not clear at what point the visit took place, in particular whether it was before or after his interview, what took place at any such meeting and what was the purpose of any such meeting. On balance, however, he accepted that S1 did receive such a visit but that the preponderance of his evidence seemed to point to that visit taking place either shortly before or at the time of his release.

Conclusions

The Coroner concluded that Daniel Carson was murdered solely because of his religion. He said he was a decent hardworking young man working to support his wife and growing family and in a workplace where he was valued and had many friends, not least Witness A:

“He was not involved in anything which would warrant adverse attention by anybody. His senseless murder is a reminder of how sectarianism has disfigured our history. His family and friends have had to carry a grievous personal loss as a result, like far too many others in this jurisdiction.”

The Coroner reached the following conclusions:

- He was satisfied that at the time of the investigation into Daniel Carson’s murder there was credible and compelling evidence pointing to S1 as the person who shot the deceased, on the basis of the statement made by Witness A on 2 November 1973. He was satisfied that Witness A became unwilling to give evidence against S1 because of fear for herself and her

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family and that this was conveyed to the RUC in the course of the investigation. Further, that she remains in fear and this is why she has resiled from her initial convincing and credible identification.

- There is no evidence to suggest that S1 had any relationship with the military and/or police either prior to or subsequent to the death of the deceased. There was nothing relevant known by police or the military in advance of the murder in relation to S1. There is nothing known subsequently about S1 after this murder that would be illustrative or point towards any relationship between him and said agencies. Similar inquiries were made in relation to S1's brother with similar results.
- The Coroner was critical of both the actions of the military and the RUC in relation to the investigation of Mr Carson's death. He was urged by the next of kin to find that their actions were informed by bias which was in part at least informed by sectarianism. Counsel for the next of kin specifically focussed on the way in which S1 was treated in custody saying he was treated in marked contrast to how the RUC treated Catholics who were arrested for paramilitary offences. The Coroner, however, said that circumstances of Mr Carson's death differed significantly from those cited by counsel for the next of kin in that there was no question of "common interests between different branches of the security forces" dictating a less than thorough investigation. The Coroner further commented that he was not satisfied with Witness A's account of the alleged conversation with a detective to the effect that S1 had an alibi. He was satisfied that Mr Quade did visit S1 when he was in custody but said there was simply insufficient evidence to support a suggestion that this frustrated the investigation, and he concluded that it was probable that any such visit took place at or about the time S1 was being released.
- The Coroner considered that there "simply was an insufficient evidential basis for coming to the conclusion that DI Nesbitt's actions and those of his investigators were in some way motivated by sectarian bias". He said the evidence in fact supported the contention that those involved in the investigation, including in particular DI Nesbitt, were entirely motivated by their view that Witness A was unwilling to give evidence and that in fact if she did her life and that of her family would be in danger: "Sadly that was all too credible a scenario at that time. As I have already said the claims made by DI Nesbitt when he was alive to the effect that "in the circumstances that existed at the time that outcome was a real possibility" are entirely credible." He said it was this assessment that led to S1 not being charged with Mr Carson's murder and the probable the reason why Witness A was not identified to the coroner was to protect her identity:

"As is clear from what I have said I am critical of the conduct of both the MOD and the RUC for the way in which the investigation into Mr Carson's murder was conducted. I recognise that this has left a very strong sense of grievance with the next of kin of Mr Carson. In making these criticisms it must be understood that this does not mean that a conviction of S1 would necessarily have been achieved had the matter been investigated more thoroughly or properly. There is no guarantee that any forensic material would have been obtained or that S1 would have acted any differently in denying his involvement in the offence. Ultimately it is probable that a successful prosecution in this case depended on the willingness of Witness A to give evidence at any trial. The entire approach of the RUC was clearly coloured by the assessment that Witness A would not give evidence even though "the recognition/identification was never in doubt"."

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Article 2 of the ECHR

The Coroner was asked to deal with an issue that arose during the inquest as to which Article 2 is engaged and the impact it should have on the court's verdict. Counsel for the MOD submitted that since this was not a "State killing" case the inquest does not attract the obligation to carry out a "Middleton" inquest. This was because it had not been established that there had been a breach of the State's substantive duty under Article 2 and in those circumstances it would be wrong of the court to express a finding critical of the RUC or MOD. In the absence of any breach of the substantive Article 2 duties imposed on the RUC or the MOD it was argued that comment in the verdict upon post shooting acts/omissions by them would not assist in addressing the question of by what means, or even alternatively and more widely, by what means and in what circumstances, did the deceased come by his death.

Counsel for the next of kin pointed out that the scope of the inquest in fact clearly looked at alleged collusive activity by the RUC and MOD. Whilst the evidence did not suggest any prior involvement by the State in Mr Carson's death it was argued that the subsequent investigative failings, influenced as was contended by sectarian bias, were sufficient to require a "Middleton" type inquest to comply with the State's obligations under Article 2. It was submitted that in order to exonerate the RUC/MOD the coroner must investigate the allegations and as such Article 2 is fully engaged.

The Coroner said he had already indicated that Article 2 is engaged to the extent that the State is obliged to provide a mechanism whereby sudden/suspicious deaths can be investigated and that Rule 16 of the 1963 Rules does not preclude establishing facts which point towards criminal liability. He said that the court had conducted an inquiry as to whether the conduct of the RUC/MOD pointed towards collusive activity on their part. He noted that if the inquest had been sitting with a jury as part of the verdict the jury would have to answer questions in relation to the allegations of collusive activity which form part of the scope of the inquest. It would be entitled to do so in a narrative form but it could not avoid answering questions relating to the issues raised in the course of the evidence. In addressing this issue the jury would be making findings of fact and drawing inferences of fact which is its traditional function.

The Coroner concluded that having conducted the inquest in accordance with the scope and having been invited by both parties to rule on allegations of collusive activity his decision was that his findings on the issue should form part of the verdict.

The Verdict

- (a) The deceased was Daniel Carson of 122 Brooke Drive, Belfast.
- (b) He was certified dead at 17.45 hours on 1 November 1973 at the Royal Victoria Hospital Belfast.
- (c) His death was caused by a laceration of the brain due to a gunshot wound to the head.
- (d) There was compelling and credible evidence that the injury sustained by the deceased was as a result of a bullet fired by a person identified as S1.
- (e) There is no evidence of any State involvement in the murder of Daniel Carson or evidence of any collusive activity between State Agents and the murderer prior to or subsequent to Mr Carson's death.
- (f) The investigation into the death of Daniel Carson was flawed and inadequate.

NOTES TO EDITORS

Judicial Communications Office

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on the Judiciary NI website (www.judiciary-ni.gov.uk).

ENDS

If you have any further enquiries about this or other court related matters please contact:

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