



Harriet Wistrich
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Our Ref:

Your Ref:

13 February 2009

Dear Harriet,

Re: Jean Charles de Menezes

Although the jury did not return a verdict of unlawful killing (the option not being left by the coroner) so that the case of *R v DPP ex parte Manning and Melbourne* did not, strictly speaking, apply, nevertheless I did conduct a further review.

I considered all the evidence given at the inquest as well as that given at the trial in 2006, in order to see if any person or persons should be prosecuted for any offence arising either out of the death of Jean Charles de Menezes or for evidence given at the inquest. For the reasons set out below I have come to the conclusion that the Code for Crown Prosecutors is not met in relation to any individual (I leave 'Owen' to one side as the IPCC are still considering his conduct.)

I first considered C2 and C12. There are two issues relating to them; first did they shoot Jean Charles in self defence and secondly did they lie about what was said and done (by Jean Charles and themselves) immediately before they shot him? For any prosecution for homicide to be considered, the Crown would need to be able to prove, to the criminal standard, that they were not acting in self defence. I note that it was the coroner's view that there was insufficient evidence to leave the issue of unlawful killing to the jury, nevertheless I went on to consider whether there was sufficient evidence available to prosecute them for murder. I concluded that although the jury's answer to specific questions cast doubt on their veracity on certain aspects of their evidence, there was insufficient evidence to show that these two officers did not honestly and genuinely believe that they were confronting a suicide bomber about to blow up the people on the train. In those circumstances, I have no doubt that a jury would conclude that the actions they took, in that belief, were reasonable to meet that perceived threat.

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I then turned to the question of perjury. The answers by the jury to the specific questions: was a warning shouted, did Jean Charles stand up and did he move towards the officers? make it clear, albeit to the civil standard, that the jury did not accept the officers' accounts. I take due note of the jury's answers but I also have to bear in mind that it is the evidence that must inform my conclusions.

Whilst there are some inconsistencies between some of the officers' accounts there are also some inconsistencies in the passengers' accounts. Some heard shouting before the shots (although none say it came from C12) and yet others were adamant that no shouting took place at all until afterwards. For example Terri Godly whose statement was read said she heard warnings and a call of 'armed police' before any shots were fired and Holly Greenland also claimed to have heard shouting before shots were fired. The two witnesses, Livock and Wilson who give the most credible accounts and were closest to the incident, failed to notice that two officers and not one, were firing. The prosecution cannot pick and choose which witnesses to call and which to ignore, when all are equally capable of belief. I do not seek to undermine the accounts given by the witnesses but simply to demonstrate that those few brief moments present a totally confusing picture which a jury would not be able to say with the degree of certainty required, that officers had lied to the inquest. I must also take into account that the burden is on the Crown to prove either the falsity of the relevant statement or that the officer in question did not believe what he had said was true.

I then turned to the management team and considered the actions of John McDowall, Cressida Dick, Vince Esposito and Greg Purser. I took the view that if there was any criminal culpability arising from the death of Jean Charles de Menezes then it would fall to one or more of the above and that if none of the above could be prosecuted then any errors by others involved would not meet the high threshold necessary to justify prosecution.

I was satisfied that both McDowall and Dick owed a duty of care to that narrow class of persons who could be described as the occupants of the relevant block of flats at Scotia Road. The extent of that duty in relation to those people was to take reasonable steps to ensure that anyone who left those premises was protected from harm when stopped by police officers who had been deployed for that purpose.

I was not satisfied that either McDowall or Dick breached their duty of care to Jean Charles. As far as McDowall is concerned, the police system is one in which highly trained and experienced officers are given tasks and are expected to comply with those tasks. It would have been wholly impracticable for McDowall to be informed about the multitude of tasks which flowed from his strategy (which did not just involve 21 Scotia Road.) He relied on his highly trained and experienced staff, which is precisely what a reasonable Commander would do and I am sure that no jury would expect a person as experienced as Dick to have been required to consult or inform McDowall when there were any changes to the detail of that strategy. It should be borne in mind that there was no indication how long this operation would last, so any suggestion that Dick should have consulted McDowall when there was any change in the strategy is unjustified. I am therefore satisfied that the Code test is not met in relation to Commander McDowall. As I do not identify a breach of duty, it follows that causation is not proved but even if a breach could be identified which was causative of Jean Charles's death, there was nothing in his conduct which could remotely be considered by a jury to have been 'reprehensible', or 'bad' or 'wicked.'

I have reconsidered my original views in relation to Dick. Having identified above the duty of care she owed to the occupants of the premises, any breach could only be in relation to when and how they were stopped. Her duty of care was to take reasonable steps to ensure that those who were stopped were stopped safely. Therefore it cannot be the case that **not** stopping Jean Charles in the vicinity of Scotia Road amounted to a breach of her duty of care. It became clearer at the trial and then at the inquest that she was unaware until about 9,45 that the person we now know to be Jean Charles had left the

premises. I do not consider that it can be contended that she was negligent in not being told a person had left and was being considered as a possible suspect by surveillance officers.

Any breach could only arise in relation to the order to stop and here I am satisfied that there is insufficient evidence of any failure on her part to leave to a jury. She had to be guided by other officers and it seems that there was amongst a number of them a belief that Osman had been positively identified. The order to stop him was, on the information before her, the correct order. That there was confusion over the identification cannot, on the evidence, lead to a conclusion that Dick was negligent.

Although she changed the order about who was to carry out the stop, this was based on erroneous information about the ability of CO19 (based on their location not a comment on their expertise) to effect the stop. When she was advised by Esposito that CO19 could carry out the stop, she was entitled to rely on his expertise and that of the officers on the ground. It is accepted that CO19 were the best equipped and trained of all the officers present, to carry out the stop and any reasonable Commander would have used them in the belief that they were in a position to carry out an effective stop. There was no negligence on her part which meant that she was unaware that CO19 were not close enough to stop Jean Charles above ground. Even if I am wrong on the issue of a breach, I would repeat the conclusion I reached above in relation to McDowall and the fourth *Adomako* test.

I then considered Esposito and Purser. I took the view that Esposito did not owe Jean Charles a duty of care. Esposito gave advice to Dick as a result of which she made decisions. His role did not create a duty of care towards Jean Charles. Even if I am wrong on this I can identify no actions which would constitute a breach of a notional duty of care to Jean Charles. I do not consider that he could be deemed negligent in advising Commander Dick that CO19 were in a position to make a stop when in fact they were across the road from Stockwell Station in their cars as Jean Charles entered the station. Furthermore even if I am wrong on this, the prosecution would be unable to prove that this **was** a more than minimal contribution to the death of Jean Charles – see *R v HM Coroner for Inner London, ex parte Douglas-Williams* (1999) 1 All ER 344. The intention had always been for CO19 to stop Osman and the fact that Esposito may have misunderstood their precise location does not mean that this **was** a more than minimal contribution to Jean Charles death. Finally, even if I am wrong on causation, there was nothing in his conduct which could remotely be considered by a jury to have been ‘reprehensible’, or ‘bad’ or ‘wicked.’

Purser’s briefing was defective in its lack of balance but I do not believe that this created a personal duty of care to Jean Charles. Even if I am wrong on this, the evidence now available does not support a contention that this was a more than minimal contribution to Jean Charles’s death. Both C2 and C12 were clear in their evidence that they had no preconceptions on shooting as they approached the train. Therefore there is no evidence that Purser’s briefing was a causative factor in Jean Charles’s death. Again as for the other officers, the final *Adomako* element is not present.

My conclusions may disappoint the family but I have considered all the evidence most carefully and came to the only decision possible, consistent with the evidence.

I am grateful to you and the family for your patience throughout this long and distressing period and I hope that the trial and inquest have gone some way to explain how Jean Charles came to die in such tragic circumstances.

Yours sincerely,

Stephen O’Doherty