

The Case of P's Brother

On 26 July 1990 P's brother was shot dead on his own land with both barrels of an unlicensed 12 bore shotgun, after he had removed a boundary fence his neighbours had erected illegally through his woodland. On hearing gunfire, the victim's son went into the woodland to look for his father. After hearing his name called, he was then shot and injured with the same gun that had been reloaded. At this point the ambulance men, already called to the first shooting, ran for their lives, leaving P's brother unattended for three and a half hours, because of a police siege situation.

Two men, a father and son, were charged with murder. At the trial in June 1991, the accused walked free when the judge stopped the trial at the end of the prosecution evidence, and ruled the prosecution had failed to prove an agreement to kill. He ordered the jury to acquit the defendants.

Despite both the accused men being armed with shotguns, the judge gave an absolute discharge to the guilty pleas of carrying unlicensed firearms, and the CPS withdrew the charge of wounding with intent to endanger life in relation to a 14 year old boy, because it was not in the public interest.

The dispute over land owned by P's brother that led to the tragic events of 26 July 1990, was already in the hands of the victim's solicitor. The neighbour, having already unsuccessfully tried to purchase the land on three occasions, had taken matters into his own hands and illegally moved the boundary fence. In the six months prior to the tragedy police records logged incidents of intimidation by one of the defendants involving a shotgun, firing over the victim's head, and on another occasion deliberately driving at the victim causing him to leap into a hedge to avoid being hit. P could not understand why the solicitor handling this dispute, and a witness involved, were not called to give evidence.

Seven weeks after the acquittals the victim's killers, contrary to this evidence, continued the legal case of ownership, stating that they had owned the land for twenty years. They received legal aid to fight their case but dropped it one month before the County Court hearing. They were fined £50 for trespass and ordered to pay £500 for the damage caused by erecting the fence - no mention of misuse of public funds (legal aid) or the stress caused to the victim's family having to fight a case based on the perpetrator's lies. At no time during the criminal trial was it stated that P's brother was murdered on his **own** land by trespassers carrying shotguns.

In 1993 the family of the victim were awarded Criminal Injuries Compensation after the Criminal Injuries Compensation Board declared that the victim had 'died unlawfully and his conduct no way contributed to the incident or to his death'. This ruling was in direct conflict with the ruling of the judge at the murder trial. P then decided to embark on civil action on behalf of his nephew who had been shot, but had survived his injuries. In order to proceed with the civil action P had to purchase the trial transcript, which cost £4,250. He also had to take the police to court for the release of the police evidence of photographs and video of the crime scene, for which he had to pay a further £224. It will cost P £7,000 to purchase the transcript of the civil trial.

In 2002 the case was brought to the Crown Court, after years of struggle to obtain legal aid. Having finally been granted legal aid in 2001, it was withdrawn again 8 days before the trial date. This was a devastating time for the family, the stress affecting P's health. It took another year to have it re-instated, but this was not until 2 weeks before a second trial date. Too late for the family to find a top class QC sufficiently versed to fight their case. The family was disadvantaged.

Nevertheless, damning evidence from an independent renowned ballistic expert, after test firings with the murder weapon, showed that the shooting could not have taken place as described by the defendants.

P's brother was not the aggressor, but in fact an unarmed man trying to defend himself, in a pugilistic stance, shielding his face with his arms, when facing two men with shotguns.

Despite overwhelming evidence the judge ruled that P's brother had been lawfully killed, that the shooting had been an accident.

Paragraph 78 of the judgement:

"I have no doubt, therefore, that once he (the defendant) had decided to go to see exactly who was removing the fence he bought the gun with a view to taking it with him when he went out that evening. To that extent I accept that the new gun was bought for the purpose of the expedition. I have no doubt that he intended to intimidate (the victim) or anyone else he might come across in the woods that night by carrying guns".

He goes on to say, *"It is unfortunate that... (the defendant) was the sort of man who felt more confident carrying a weapon. I do not think that he went out that night with intention of shooting (the victim), but I am quite satisfied that he was willing to use the gun to intimidate and if necessary fire it for the purpose".* (The day before the killing the neighbour purchased a more powerful shotgun, deciding his 16 bore was not adequate).

Everyone, even the media, left the court in disbelief and appalled at a system where a judge can condone the carrying of loaded guns for intimidation.

The family have totally lost faith in the justice system. P hopes that his brother's case will help other families by proving the importance of victims being consulted and informed at every stage of the criminal justice process. That they should be entitled to have explanations of why evidence and witnesses they feel crucial to the case are not brought before the court. ***A victim advocate would have been of enormous help to this family and lessened what has been years of untold anguish and trauma.***

P's brother was consistently described by the defence counsel as being around 6'4" or 6'5" tall and weighing around 18 to 20 stones, in order to portray the victim as intimidating to his attackers. Despite the family being able to disprove this fact, by the victim's passport and photographs showing that he was in fact 5'11" and around 14 stones, this evidence was not used. Why?

Police records showed that one of the defendants had previously had his gun and ammunition confiscated by the police for firing over the heads of a woman and her young son. The police returned the gun and ammunition three months later on request.

The judge misquoted, from a recorded police interview, the victim's words prior to the attack, this favoured the defence case, and a crucial witness who drove the killers to the woodland where they lay in wait for the victim was not called to give evidence as a party to the crime.

The appeal process against what is seen as an unjust verdict should be made more accessible to the victims' families and, as is clearly demonstrated in this case, occasions warrant the need for copies of a trial transcript. These should be an entitlement to the families at no cost to themselves.

Finally, P hopes that no other victim is treated as appallingly as his 14 year old nephew, who was interviewed by the police until 5 a.m. the following morning, injured, with no family member present and, not having witnessed the first shooting, not knowing whether his father was alive or dead.

P has campaigned ever since 1991 for a public inquiry to be held to Investigate this case, as it appears there are those who are above the law.