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**SHOOTING INCIDENT INVOLVING 40 CDO RM AT JUNCTION OF ROUTES TOPEKA
AND HEART BETWEEN AZ ZUBAYR AND SHAIBAH ON 17 DEC 04**

References:

- A. 61 Sect SIB (RMP) Final Report CCRIO 64872/04 dated 10 Mar 05.
- B. 61 Sect SIB (RMP) Additional Evidence 64872/04 dated 23 Apr 05.
- C. J3/3072 (Policy for the Recording and Investigation of Shooting Incidents) dated 5 Dec 04.
- D. J3/3072 (Policy for Storage and Archiving of Records Relating to Shooting Incidents) dated 24 Apr 04.

INTRODUCTION

1. During the early evening of 17 Dec 04, 8 members of 40 Cdo RM were tasked to escort a BFBS disc jockey from Az Zubayr Port (AZP) to Shaibah Logistics Base (SLB). Their convoy consisted of two vehicles each containing 4 Mnes, with the BFBS employee also travelling in the lead vehicle. Two of the Mnes in each vehicle acted as top cover. Towards the end of their journey, a white saloon car approached the convoy at some speed from behind. A succession of hand signals, shouted warnings and aimed warning shots were used by the top cover in an attempt to deter that car as it continued to get closer to the convoy and overtake the Land Rover. Those attempts appeared to have no effect, so a number of shots were aimed at the windscreen of the white car. That car then veered onto the central reservation. No more shots were fired thereafter. The driver of the white car was subsequently taken by an unknown civilian to a nearby hospital where he was pronounced dead.

SUMMARY OF THE EVIDENCE

2. At approximately 1730 hrs on 17 Dec 04, the nominated patrol from 40 Cdo RM was preparing to escort the BFBS DJ, Mr Steele, to SLB from their location at AZP. All the Mnes were current as regards training requirements for weapon handling, Rules of Engagement (ROE) and use of force. Prior to departure, they were briefed by the Intelligence Officer as to current threats, including the threat from suicide vehicle-borne improvised explosive devices (SVBIEDs), which was assessed as moderate to high. Certain 4-door saloon vehicles were identified as specific threats, and the troops were advised to be suspicious of any vehicles approaching from behind and trying to penetrate the convoy.

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3. Sgt SO29 was in command of the convoy. Prior to departure, he briefed the Mnes on the actions to be taken should they encounter a vehicle which they believed to be a SVBIED. The first action would be to use a hand signal to persuade the vehicle to slow down or stop. If necessary, the graduated response would escalate to raising weapons and pointing them at the vehicle, then firing a single warning shot into the bonnet, if necessary to be followed by further aimed shots into the bonnet. If those responses all fail and the vehicle is still considered to be a threat to life, then shots would be aimed at the driver of the vehicle. The guidance contained in Card Alpha was to apply throughout.
4. Sgt SO29 travelled in the first vehicle, a Pinzgauer, driven by Mne SO34. Top cover for the Pinzgauer was provided by Mnes SO28 and SO32. The second vehicle was a Land Rover driven by Mne SO35, with Cpl SO30 (2IC) as a passenger and Mnes SO33 and SO31 providing top cover. About 30 minutes into the journey, the c/s passed the 'Two Mosques' roundabout following the route used routinely to access SLB. This involved crossing over the central reservation before preparing to turn right onto a fork road heading to SLB.
5. At about the same time, the witness Mrs Basima Abdul Hassan Khazaal was travelling in the direction of Al-Zubayr near the junction for Shaibah. She was in a white Daewoo Prince car being driven by her husband, Abdul Hussan Talab Hassan, an off-duty Iraqi police captain. They were talking to each other as they travelled along at what she said was moderate speed. Her 3 year old daughter was sitting on her lap in the front passenger seat. The witness suddenly became aware of bright lights up ahead, although she cannot say what those lights were or how far away they were. She thought they were on a one lane road, and did not overtake any other vehicles, and she did not recall seeing any military vehicles although it was dark and she said she was not paying much attention.
6. Mne SO31 describes the white saloon car travelling at great speed through the traffic towards the rear of the Land Rover for which he and Mne SO33 were providing top cover. Mne SO31 immediately thought the car may be driven by a suicide bomber. Accordingly, he gave a warning signal by holding out his hand, palm open towards the driver, in a gesture to make the car stop. Mne SO33 did likewise. This had no effect and the car kept speeding towards the Land Rover, rapidly closing the gap between them.
7. Both Mnes then pointed their weapons towards the white car, but it continued to advance. Although night had fallen, the Land Rover was illuminated by the lights of the white car and other vehicles on the road. When the white car came within around 15 metres of the Land Rover, Mne SO31 feared for his safety, and thought that the white car was a SVBIED which would hit his vehicle and kill the members of his c/s. Accordingly, he fired one aimed shot with his SA80 at the bonnet of the car to try and make it stop. After that shot was fired, the car continued to drive towards the Land Rover. When the car was about 10 metres away, Mne SO31 fired two further aimed shots at the car bonnet to try and make it stop. As he fired those shots, the car moved slightly towards the central reservation and out of his arc of fire.
8. It was at that stage that Mne SO31 saw what he considered to be a muzzle flash from the area of the white car driver's door window, and heard 2 shots. He did not see a weapon but felt sure that his Land Rover was being shot at. This is corroborated by Mne SO35 the driver of the Land Rover. As he was preparing to turn right onto the fork road to SLB, he saw the white car overtake his vehicle. As it did so, he saw 2 bright flashes from

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the area of the driver's door window. He believed these were muzzle flashes as they coincided with loud bangs.

9. Mne SO33 also thought he heard a shot fired from the white car, and was convinced that the car was a SVBIED. Fearing for the safety of his multiple, he fired a burst of rounds from his Minimi, at the driver's side of the windscreen of the white car which was about 6 metres from him at that time.

10. Mne SO32 (top cover in the Pinzgauer) first became aware of the incident when he heard a burst of small arms fire to his rear left. When he saw the white car, it was about 5 metres from the Land Rover, and he saw what he thought were muzzle flashes and heard gunfire from the white car. He felt in immediate danger and fired one aimed shot at the bonnet of the white car. The car did not stop but continued to overtake the Land Rover and drive towards the Pinzgauer. Mne SO32 shouted, "Contact" as he saw more firing apparently coming from the left side of the white car, and he fired further aimed shots.

11. Mne SO28 was similarly of the view that there was a weapon being fired from the driver's side of the white car. He considered that his colleagues' lives were in danger and fired a single burst with his Minimi towards the white car as it drove straight towards the left hand side of the Pinzgauer. The car then veered to the left and turned back sharply right as if it were about to ram the convoy. Believing that the vehicle may have been a SVBIED he fired a further 2 bursts whereupon the white car veered towards the central reservation and spun to a halt. Cpl SO30 then shouted "Stop, stop, stop, cease fire" over the PRR. Thereafter, no more shots were fired and the convoy continued to SLB which was just a few minutes' drive away.

12. In addition to the evidence of the Mnes, the evidence of Nicholas Steele, the BFBS employee, is of importance. He first became aware of the white car when he heard a "very high revving engine sound" and the screech of spinning car tyres from behind the Land Rover. From his viewpoint in the rear of the Pinzgauer, he saw the headlights of the vehicle which was alongside or just passing the Land Rover.

13. He also heard shouting followed by gunfire, but by that time he was taking cover in the Pinzgauer by lying down. He did notice that the various bursts of gunfire sounded as if they were of different pitch, and it sounded like the higher pitched 'popping' sound gunfire came from the vehicle which had overtaken the Land Rover.

14. The first that Sgt SO29 knew of the incident was when he heard a single high velocity round fired from behind his vehicle, followed by a further 2 or 3 shots. This was followed by a burst of automatic fire from one of the top covers on his vehicle, just as Cpl SO30 announced "Contact left" over the PRR. Sgt SO29 then saw the white saloon passing his vehicle along the dual carriageway, just as his own vehicle turned onto the right fork road. He sent a contact report and told Mne SO34 to drive fast out of the area he described as the danger zone or killing area.

15. Capt Hassan's wife simply describes hearing gunshots fired in the direction of their car. She did not know where those shots landed, or how many shots were fired. After the shots were fired, their car started to swerve off track to the left and then spun onto the central reservation where it stopped. The witness then saw that her husband was bleeding and apparently unconscious and she managed to attract the attention of passing motorists.

16. One of the motorists who stopped was Hareth Habeeb Othman Thiab Al-Tamimi. He described the road at the scene of the incident as the 'Al-Zubayr motorway', with a central reservation. Assisted by another member of the public, that witness moved the body of Capt Hassan into his own car and drove to the hospital also taking Capt Hassan's wife and daughter, neither of whom were injured. Capt Hassan was pronounced dead at hospital and his body was released to the family at about 2015 hrs that night.

17. It is apparent from the Iraqi police file that a pistol was recovered from Capt Hassan, but there is no statement to that effect and no evidence of continuity. Mrs Hassan said that her husband had a pistol with him that night, although she said it remained tucked in his trousers throughout the incident. There is also conflicting evidence as to forensic examination of that pistol (if indeed the pistol which was examined did belong to Capt Hassan). The weapon was apparently clean when inspected in Baghdad, but the UK forensic scientist concluded that the interior of the barrel showed "evidence of recent fouling". In addition, when recovered, the pistol magazine contained only 2 rounds.

ADVICE & RECOMMENDATION TO CO 40 CDO RM

18. The actions of those members of the convoy who opened fire must be considered in the operational context in which they occurred. The evidence contained in References A and B clearly indicates that the convoy was approached from behind by the white Daewoo driven by Capt Hassan, and that he did not heed the various warnings given by the Mnes acting as top cover.

19. A crucial issue in assessing the actions of the Mnes involved is their honestly held belief at the time they opened fire. To help with assessing that belief, it is useful to consider the radio log which was effectively recording the incident as it happened. That document shows that at 1757 hrs the initial contact report included mention of automatic fire, a "civi" vehicle, and fire being returned. Similarly, the contemporaneous watchkeeper's log refers to the c/s being "engaged" (1757 hrs), "contacted by 1 x civilian veh" (1802 hrs) and "contacted by automatic fire from white 4 door saloon..." (1815 hrs). It is also of note that upon arrival at SLB, when Mr Steele asked what had happened, one of the Mnes told him that a white Nissan had come to the side of the truck and "opened up".

20. In all the circumstances, the actions of those Mnes who opened fire were in my view necessary, and proportionate to the threat they perceived at the time, whether that threat was from a SVBIED or small arms fire or both. A total of 42 rounds were fired by the 4 Mnes, two of whom were armed with Minimi. This cannot reasonably be considered excessive in the circumstances. There were also obvious efforts made to avoid injury to persons other than the driver of the white car, as is borne out by the photographs of the white car after the incident. Accordingly, I am satisfied those members of the convoy who opened fire did so in accordance with the guidance set out in Card A, notwithstanding that Capt Hassan was killed as a result.

21. A goodwill payment of \$2500 was offered to the wife of the deceased, though this offer was declined, apparently on the basis that it was not accompanied by any admission of liability. The Area Claims Office has confirmed that, as at 24 Apr 05, no official compensation claim has been received from Mrs Hassan.

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22. Having regard to the operational context within which this investigation was conducted, in my opinion you may be satisfied that Reference A is a satisfactory investigation into this incident in all the circumstances of the case.

ADVICE & RECOMMENDATION TO DCOS DSC

23. This incident was a Shooting Incident within the meaning of Reference C. In accordance with Reference D it now falls to DCOS DSC to determine whether action on this matter is complete. My advice is that it is, and the file should be closed and forwarded to J1 HQ DSC in accordance with Reference D.


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