
FURTHER SUBMISSIONS ON BEHALF OF MICHAEL CROSBIE

Treatment of D003 on journey to Camp Stephen

1. No finding could properly be made that Mr Crosbie witnessed D003 being punched in the vehicle which he took from the home of D005 and D006 to Camp Stephen, for three persuasive reasons:
 - a. Mr Crosbie gave credible, consistent evidence was that he did not witness any such punch or assault;
 - b. The evidence of D003 is not reliable in this respect; and
 - c. Even if D003 was punched in a vehicle during 14 September 2003, it cannot safely be inferred on the evidence that Mr Crosbie must have seen the punch, but chose to ignore it and then lie about it.
2. Dealing with each of these in turn in more detail:

A. Mr Crosbie's credibility

3. Mr Crosbie gave credible, consistent evidence that he did not witness any punch or assault on D003 in a vehicle:
 - a. At BMI 19/181/2:

Q. I want to ask you some questions about events outside the house and in the vehicle involving D003, the man you had taken there. All right? At any time, did you see that detainee being threatened or assaulted?

A. D003?

Q. Yes.

A. No, sir.
 - b. At BMI 19/182/4:

Q. He also says that when in that vehicle -- and it may have been at a later stage -- with both you and the muscular soldier, he asked for a drink of water and he was struck a glancing blow to the face by the muscular soldier in your presence. Did that happen?

A. No, sir.

Q. You are sure of that, are you?

A. Yes, sir.

Q. *If it happened, would you tell this Inquiry?*

A. Yes, sir.

c. Likewise at BMI 19/226/3.

4. In the face of such evidence from Mr Crosbie, the Inquiry would need strong, credible evidence that (a) D003 was struck by a soldier in a vehicle and (b) that Mr Crosbie (as opposed to another soldier) was a. in the same vehicle and b. must have seen it, before it could safely make such a finding. For the reasons developed below, there is no strong evidence to support either point.

B. Unreliability of D003's evidence

5. While not for a moment suggesting that he did not suffer extensive abuse at times over the period of 14 to 16 September 2003, D003's contradictory and confused evidence demonstrated that he cannot safely be relied upon in relation to individual allegations of small detail, as in this case. Moreover, he accepted that his memory was unreliable. For example:

- a. D003 initially gave oral evidence to the Inquiry that toilet water was flushed over Baha Mousa [BMI 10/73/22]. When it was put to him that he had made no such allegation in his statement to the Inquiry or at the Court Martial¹ ("we were not badly treated in my toilet cubicle") [BMI 10/74/18], he in effect retracted the evidence, stating "I can't remember. I can't remember", going on, in effect, to admit that his memory is unreliable [BMI 10/76/2 ff]². See also Kingsley Napley's submissions on this point at SUB000682-3.
- b. D003 exaggerated his injuries, falsely claiming that he had suffered broken ribs [D003, PIL000087 para 69] when in fact he did not [MOD000402-3].
- c. D003's accounts of when he was TQed are confused and inconsistent. In his Inquiry statement, he states that he thinks it was "during the morning of the second day" noting it was daylight [BMI02385 para 61], whereas in his Younis statement he said that it was during the evening on the first night [MOD012052].
- d. D003 gave sharply inconsistent evidence about whether he was touched in a suggestive manner. He did not make the allegation in any of his statements before the Younis statement of 11 May 2004 [MOD012051]. In February 2006, he told the RMP that a soldier did not squeeze his nipples

¹ CM 18/84/12.

² "Probably sometimes I remember things that happened long time ago and some other times I forget things that happened yesterday."

[MOD046604], but then in his statement to the Inquiry, he said that a soldier "touched my nipples in a suggestive manner" [BMI02389]. Finally, when asked by the Inquiry whether this happened, he said (unpersuasively) that he didn't remember it [BMI 11/16/16].

6. There are inconsistencies in his account of the alleged punch in the vehicle itself. For example, in MOD000061 he stated "I asked the interpreter if I could have some cold water. I had not even finished the question" when he was punched; in the Inquiry he says that he didn't say *anything*, "I just tried to open my mouth" [BMI 10/80/10]. Similarly, D003 was incorrect, and was shown to be over-stating matters, when he specifically disagreed with Counsel to the Inquiry's description of the vehicle as a 'military van', saying "It was a tank actually" [BMI 10/78/22]. D003 was not transported in a tank, and he would know what a tank is, as opposed to another military vehicle.

C. No evidence that Mr Crosbie saw the blow in any event

7. If Mr Crosbie was in the vehicle at the time, and if D003 was struck by the muscular soldier, there is no evidence that Mr Crosbie must have witnessed it:
 - a. D003 was never asked whether Mr Crosbie saw him being struck in the vehicle, and D003 never stated that Mr Crosbie did see him being struck, either at the Inquiry, or in his earlier statements. D003 simply stated that another man struck him to the left side of his face.
 - b. The alleged blow was not particularly forceful. D003 described it as a "glancing blow", a "warning shot" that was not intended to hurt him [BMI02379], and was not sufficiently forceful to cause him injury [BMI 10/80/21]. Such a "warning shot" would be less likely to be noticed by others in the same vehicle than if more force was used.
 - c. The blow was a significant period of time later than the last time D003 engaged with the "intelligence officer", if this be Mr Crosbie. In his evidence to the court martial, he said that the intelligence officer indicated the muscular soldier, and that he asked for water later, "after a while", whereupon he was struck. Therefore there is no suggestion that the intelligence officer was engaging with or concentrating upon D003 or the muscular soldier *at the time* of the alleged blow.
 - d. According to his statement of 22 September 2003, the "intelligence officer" was not sitting next to the muscular soldier, nor D003 himself. This also would lessen the chance of the intelligence officer seeing any minor incident

between the muscular soldier and D003. As described at MOD000061, D003 was opposite the stocky soldier, who had a third soldier to his right, by the left rear door. D003 had an interpreter to his left, and the "intelligence officer", soldier B, was by the "right hand door", presumably the right hand rear door. At the court martial, D003 thought there was also someone at his right side, but not the intelligence officer [CM Day 18/91/22].

- e. In essence, in light of the above, the fact that Mr Crosbie does not think any such incident occurred does not mean that, even if it did, he must have witnessed it.

Conclusion

8. For the reasons above, it is submitted that the evidence is simply not sufficiently robust for the Inquiry safely to reach the serious conclusion that Mr Crosbie witnessed D003 being punched in the vehicle on the way to Camp Stephen and therefore that this officer chose to lie about it.