

Office of the Police Ombudsman for Northern Ireland:

Statement under Section 62 of the Police (Northern Ireland) Act 1998.

A STATEMENT UNDER SECTION 62 OF THE POLICE (NI) ACT 1998 RELATING TO A COMPLAINT ABOUT THE POLICE HANDLING OF THE INVESTIGATION INTO THE DISAPPEARANCE OF ARLENE ARKINSON

1.0

INTRODUCTION

- 1.1 In October 2005, the Police Ombudsman's Office received a complaint that police had failed to properly investigate the disappearance and subsequent murder of Arlene Arkinson in 1994.

- 1.2 The Police (Northern Ireland) Act 1998 states that the Police Ombudsman may only consider complaints about incidents which are alleged to have happened within the previous 12 months unless he believes criminality or misconduct may have occurred and the matter complained about is 'grave' or the circumstances 'exceptional.'

- 1.3 The Police Ombudsman took the view that the matters complained of were both 'grave' and 'exceptional.'

2.0

BACKGROUND

- 2.1 Arlene, was 15 years old and a vulnerable person. At 2250 hours on 13 August 1994 she left her sister's house with a female friend, Suspect C. The pair said they planned to go to a public house in Bundoran. It was reported that they met up with two men, Suspect A and Witness A.
- 2.2 Suspect A drove all four in his Metro car to O'Neill's Public House and the Palace Hotel in Bundoran. At 0200 hours on 14 August, they left the hotel and drove back to Castlederg.
- 2.3 At around 0220 hours, Arlene's friend, Suspect C and the male passenger, Witness A were left at their home address, leaving Suspect A and Arlene alone in the car. This was the last known sighting of Arlene. She never returned home Suspect A stated that he left her close to the Walls Public House in Castlederg at 0245 hours.
- 2.4 On 28 September 1994, Suspect A was arrested – 46 days after Arlene's disappearance - but was later released without charge. Following further investigation, he was arrested in 2002 and charged with Arlene's murder. He denied any involvement in Arlene's murder and following a trial at Belfast Crown Court in 2005, was found Not Guilty.
- 2.5 Arlene's body remains undiscovered. Her disappearance remains unresolved.

3.0

ALLEGATIONS

3.1 A member of Arlene's family complained to the Police Ombudsman's Office that police had failed to effectively investigate her disappearance.

In particular, they made the following allegations:

- (1) That police conducted a poor initial investigation into the missing person enquiry and took too long to make enquiries.
- (2) That they failed to remand suspect A in custody for breach of bail in relation to a curfew that he was on when he was with Arlene.
- (3) That police should have arrested Suspect A sooner than they did

and
- (4) That police failed to recover and search his vehicle.

They also asked:

- (5) What was the 'intelligence' and grounds to arrest Suspect D and search his home address?

- (6) What was the difference that resulted in the PSNI charging Suspect A in 2002 from when they arrested him in 1994?

4.0

INVESTIGATION

- 4.1 The Police Ombudsman investigation looked at the initial decision and actions police made when Arlene had been reported missing. Police Ombudsman investigators also reviewed the murder investigation, including its policies, witnesses, suspects, 'intelligence' strategies and actions undertaken. The investigation also looked at linked incidents and the court trial. Police Ombudsman investigators also interviewed the police officers who were key to the investigation.
- 4.2 The police investigation can be divided into three phases: in 1994, in 1996 and in 2002.
- 4.3 **Phase One of police investigation** - Police Ombudsman investigators established that Arlene's disappearance was not reported to police until 18 August 1994 – four days after her disappearance. Arlene had stayed away from home overnight before and family members made their own enquiries locally. When this proved negative they informed Arlene's social worker, who reported the matter to the police.
- 4.4 Officer A filled in a Missing Persons Report that day. He visited Arlene's home and took details from her family. He conducted interviews with key witnesses, followed up other possible sightings and made arrangements for police in Birmingham to speak with other family members who lived there.

- 4.5 For two days Officer A continued to investigate the disappearance. He and other uniformed officers conducted house-to-house enquiries in the area and in rural locations near Arlene's home. The police quickly identified the key witnesses as those who were in the car with Arlene and those who had socialised with her. The police, with the help of Arlene's family, also identified others who were in the area at the time.
- 4.6 The accounts they received from different people alerted Officer A to inconsistencies in the statements given by key witnesses. He contacted the Criminal Investigation Department (CID) at Strabane Police Station and informed them of his findings.
- 4.7 On 20 August 1994 - 7 days after Arlene's disappearance, Officer C, a Detective Inspector at Strabane who was initially the senior detective overseeing the investigation instructed Officer A to continue his investigation and said he would 'monitor' it.
- 4.8 On 24 August 1994 - 11 days after Arlene's disappearance, Officer C held a conference to ensure a coordinated approach to Arlene's disappearance was being taken. He instructed further searches be carried out in the area of The Walls Public House in Castlederg, where Suspect A said he dropped Arlene off. The police underwater search unit, the military and members of the local community were enlisted to help search the wide rural area.
- 4.9 The police were also aware that Suspect A had a history of sexual convictions and was currently on bail for alleged sexual offences on another 16 year-old girl in the local area.

- 4.10 On 6 September 1994 – 24 days after Arlene’s disappearance – Officer C recorded that CID would now take responsibility for the investigation. Although he recorded that ‘something serious may have happened’, the police continued to treat the matter as a ‘missing person’ rather than a potential murder investigation. Overall responsibility for the police investigation at this stage was with Officer B, who made decisions in consultation with other senior officers. (On 19 September 1993 Witness B, who was under 17 years of age, reported an incident to the police that Suspect A has carried out a number of sexual acts on her. He later admitted the offences and was convicted in January 1995).
- 4.11 On 23 September 1994 – 41 days after Arlene’s disappearance - Officer C recorded that suspects A, B and C were to be arrested because ‘enquiries point strongly to Suspect A having killed Arlene and Suspects B and C withholding information about the murder.’
- 4.12 On 28 September - 46 days after Arlene’s disappearance and 40 days after Suspect A came to prominence - police arrested him as their main suspect. He was questioned at length and denied committing murder. He was later released as were suspects B & C.
- 4.13 **Phase Two of the police investigation** - On 25 April 1996 police arrested Suspect D on suspicion of murdering Arlene. They had received ‘intelligence’ which indicated that her body was buried within the grounds of the family home. An extensive search was carried out but no body was found. Suspect D was questioned but denied the charge. He was later released.

- 4.14 In 2001, 14 year-old schoolgirl Hannah Williams was murdered in Kent. Suspect A was arrested and charged with the crime. During the trial, Kent Police presented evidence of 'similar fact'; including the evidence of witness B and the similarities with the disappearance of Arlene. Suspect A was convicted of the murder of Ms Williams.
- 4.15 **Phase 3 of police investigation** - in 2002 Arlene's disappearance was re-investigated under the leadership of a Detective Superintendent Officer E. Suspect A was re-arrested and interviewed. He was later charged with the murder and appeared at Belfast Crown Court and was found 'Not Guilty'.

5.0

FINDINGS

- 5.1 **Allegation One - The police conducted a poor initial investigation into the missing person enquiry and took too long to make enquiries.**
- 5.2 **Finding One - The Police Ombudsman has substantiated this allegation in part.**
- 5.3 The police conducted quite a thorough initial investigation. They correctly focused on Arlene's last known movements. They correctly identified areas for searches and key witnesses were spoken to. Officer A took ownership of the initial investigation and conducted his inquiries diligently and expeditiously. He quickly identified inaccuracies among the key witnesses and reported this to CID.
- 5.4 However, there is no record that police searched Arlene's home during the first 48 hours. A number of officers believed Arlene had stayed away from home before, was 'streetwise' and that she would return home safely. This should not have been assumed by the police.
- 5.5 Soon after Arlene's disappearance there were grounds to believe it may have been suspicious: there were inconsistencies in the statement of the man identified as the last known person to be with Arlene, a man they knew to have a history of sexual convictions and

was currently on bail for alleged sexual offences on another 16 year old girl.

5.6 The subsequent investigation led by Officer B failed to treat the disappearance as suspicious at an early stage. This potentially reduced the investigative and forensic opportunities. Potential scenes were not considered for maximising evidential opportunities, including Suspect A's car, which was not seized or searched at an early stage.

5.7 **Allegation Two - police failed to remand Suspect A in custody for breach of bail in relation to a curfew that he was on when he was with Arlene.**

5.8 **Finding Two - Not Substantiated.** In May 1994 Suspect A had appeared before Strabane District Court on a separate charge and was conditionally bailed to appear again at court later in the year.

5.9 Police Ombudsman investigators examined all the original court documents and interviewed court staff to establish what Suspect A's exact bail conditions were on the night of Arlene's disappearance. Neither the documents nor the staff was able to confirm the exact conditions.

5.10 The police were not aware of the exact bail conditions in 1994. Such information from the courts was not routinely passed to police. The communication from the courts in relation to breaches of bail has been enhanced since then.

- 5.11 **Allegation Three - police should have arrested Suspect A sooner than they did**
- 5.12 **Finding Three – Substantiated** - Key police officers, when interviewed said they initially treated the investigation as a missing person enquiry rather than a possible abduction/murder. Not to have considered the possibility of an abduction or a murder at an early stage was a failing.
- 5.13 Officer B said that although police were aware of Suspect A’s previous convictions and pending court case, he continued to explore possible sightings of where Arlene may have been. He said the investigation should focus on building a case against Suspect A, rather than arresting him at that particular time.
- 5.14 However the grounds to arrest Suspect A were available within 48 hours of Arlene being reported missing. He was on bail for serious sexual offences and had been convicted of a number of sexual crimes. These factors should have raised serious concerns for the whereabouts of Arlene. Combined with Suspect A’s inconsistencies in the statement he gave to the missing person enquiry should have made him a high priority suspect.
- 5.15 The police did not arrest him until 46 days after the disappearance. The failure to do so sooner prevented the seizure of clothing he wore on the night of the disappearance and allowed the suspect the opportunity to dispose of evidence. The early seizure and examination of significant exhibits would have had the potential to provide valuable evidence. It may ultimately have resulted in the failure to trace Arlene or establish sufficient evidence to secure a conviction for her murder.

- 5.16 **Allegation Four - police failed to recover and search Suspect A's vehicle.**
- 5.17 **Finding Four - Partly substantiated.** Police recovered and searched Suspect A's car. It was examined while he was in custody on 28 – 29 September by Garda Siochána officers - the suspect had sold the car to a person living in the Republic of Ireland.
- 5.18 However, the opportunity to examine the car should have been taken much earlier in the investigation. Potential forensic opportunities were lost. The failure to explore all opportunities to return the car to Northern Ireland as an exhibit prevented any further forensic examination in preparation for the court case in 2005.
- 5.19 **Allegation Five - The family asked what was the 'intelligence' and grounds to arrest Suspect D and search his home address.**
- 5.20 **Finding Five - Not Upheld.** The Police Ombudsman's Office cannot discuss in detail the nature of the information police had received. It is satisfied that steps were taken to verify the information. Police had reasonable grounds to arrest, interview and investigate Suspect D, who was then eliminated from their enquiries.
- 5.21 The lengthy search of the suspect's home and his eventual arrest attracted widespread media attention. The Police Ombudsman's Office has been unable to establish who alerted the media to the fact that the search was taking place. It does recognise, however, that this media attention increased the anxiety of Arlene's family and also created operational difficulties for those officers conducting the search.

- 5.22 **Allegation Six - The family asked what was the difference that resulted in the PSNI charging Suspect A in 2002 from when they arrested him in 1994.**
- 5.23 **Finding Six - Not Upheld.** The 2002 phase of the investigation was well managed by Officer E using the concept of ‘similar fact’ evidence including the evidence of Witness B and the similarities with the murder of Ms Hanna Williams. The material, which was compiled, was comprehensive and well presented by police. It was presented to the Public Prosecution Service (PPS). The decision not to use it lay with the PPS, not the police.
- 5.24 The 1994 phase of the investigation did not have knowledge of the murder of Ms Williams. Without this material, and with the denial of Suspect A, the police decided there was insufficient evidence to charge Suspect A with the murder of Arlene.

6.0

CONCLUSIONS

- 6.1 The Police Ombudsman recognises that in the vast majority of ‘Missing Person ‘ cases the individual will return quickly and unharmed. In a small minority of cases, taking a ‘Missing Person’ report will prove to be the first step in a homicide enquiry. Identifying these cases at the early stages is crucial to assist an effective investigation.
- 6.2 In this case, the police did identify concerns about the missing person enquiry and reported them to CID in a timely fashion.
- 6.3 Although Arlene had previously stayed away from home overnight, she had never before been reported missing to the police. The CID did not respond with vigour to reports that a vulnerable person was missing, having last been seen in the company of a known sex offender. Together these aspects should have alerted CID management sooner to the increased possibility they were dealing with a potential murder enquiry and should have conducted their investigations accordingly, until proved different.

- 6.4 The Police Ombudsman has not found any evidence of any criminality in respect of this investigation. There are no misconduct issues reported, the senior decision makers are retired from PSNI.
- 6.5 Since this case there have been significant changes to police missing person policies, both nationally and within PSNI. The requirement for vulnerable missing person reports to be subject to regular risk assessment and review is incorporated in policies and practice. Implementation of these practices on a consistent basis with positive leadership should contribute towards avoidance of recurrence of the failings to the investigation of Arlene's disappearance.

Al Hutchinson
Police Ombudsman for Northern Ireland

August 2008

Office of the Police Ombudsman for Northern Ireland
Case Reference No – 01591339-2005

