Britain: Police will not be prosecuted for Jean Charles de Menezes killing

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The Crown Prosecution Service (CPS) announced Friday that no police officer would face trial for the killing of Jean Charles de Menezes. The CPS had reviewed the case following the open verdict given in December by an inquest jury, who rejected the police account of events. De Menezes's family has announced that they will sue Scotland Yard for damages.

Jean Charles de Menezes, a young Brazilian electrician, was shot dead on July 22, 2005, two weeks after the July 7 bombings in London that killed 56 people. He was mistaken for one of the failed July 21 bombers and was trailed from his flat by anti-terror officers. They then burst onto a London underground train, pinned Jean Charles down and shot him seven times in the head at point-blank range.

In the immediate wake of the killing there was a flood of media reports suggesting that de Menezes was a known terror suspect whose behaviour had been suspicious. It was reported that he was wearing a bulky jacket that might have concealed a bomb, and that when challenged by the police at Stockwell station he had leaped the ticket barriers and run onto the train.

This version of events was revealed to be entirely false. In fact the police had not even clearly identified him as the man they thought they were following, Hussain Osman. He was not wearing bulky clothing, and did not vault the ticket barrier at Stockwell station to evade capture or otherwise. He had, rather, picked up a free newspaper and walked down to the platform before taking a seat on the train. Eyewitnesses said that he was not challenged or warned by the police before being held down and killed.

There were rapid moves to cover up details of the case and ensure that no one was held responsible. Investigations by the Independent Police Complaints Commission established nothing. One year after the killing, the CPS ruled out prosecuting any of the officers involved on the grounds that there was "insufficient evidence to provide a realistic prospect of conviction." Instead they brought charges against the Metropolitan Police under the Health and Safety at Work Act for failing to provide for de Menezes's "health, safety and welfare."

This prosecution explicitly ruled out consideration of the legality of the killing and heard no evidence from officers or witnesses. It served to prevent a closer examination of "Operation Kratos," the shoot-to-kill policy adopted previously as part of the "war on terror."

Kratos gives Scotland Yard authority to deploy armed squads and, if necessary, to deliver a "critical head shot" to suspected bombers. As emerged during last year's inquest, police were prepared to take the "critical shot" without the immediate authority of a senior officer "because of the structures that were in place." In other words, that authority was already laid down at a higher level.

Although the police appealed against the Health and Safety prosecution, it was little more than a slap on the wrist, as any resultant fines would be borne by the taxpayer. The police were fined £175,000 in 2007, and the CPS resisted calls from the family for a full investigation.

Last year's three-month inquest was held under pressure from de Menezes's family, but the coroner, Sir Michael Wright, laid down restrictions. It was, he insisted, a fact-finding inquest, which could not return a verdict inconsistent with the Health and Safety prosecution. Blanket anonymity was granted to police officers wherever requested.

Even with these safeguards, the inquest was revealing of the police operation. Eyewitnesses rejected the police version of events on the train, insisting that de Menezes received no warning and that firearms officers did not identify themselves.

Firearms officers admitted that they wrote their statements after conferring among themselves, and after they knew they had shot the wrong person. No CCTV evidence was supposedly available for Stockwell station, nor was any video surveillance evidence available for de Menezes's flat. No audio recordings of communication between officers were provided, nor were any records of the briefings given to firearms and surveillance officers. Doubts were also cast on the surveillance log, when it was revealed that an officer

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had removed a line from his notes which contradicted police claims that Menezes posed a threat.

Wright attempted to limit the damage as far as possible. He told jurors that he would not allow a verdict of unlawful killing. He supported the argument of the police legal teams that the evidence would only support a lawful killing or open verdict. He also accepted their demand that the scope of the jury's narrative be limited to a set of specific questions to which they could answer only yes, no, or cannot decide. The family's lawyers noted that the questions were framed in a "highly offensive: and prejudicial way. They included the suggestion that de Menezes might have been in some way to blame for his death because "his innocent behaviour...may have aroused officers' suspicions."

Wright dismissed the family's lawyers arguments that there was sufficient evidence to permit consideration of an unlawful killing (murder) verdict in respect of the two policemen who shot de Menezes, and an unlawful killing (gross negligence, manslaughter) verdict in respect of former commander Cressida Dick, presently deputy assistant commissioner, and two other commanders. Wright appealed to the precedent of the Health and Safety trial, which concluded that Dick bore "no personal culpability."

Lawyer Gareth Peirce pointed out that the family had highlighted "25 serious and catastrophic failures" on Dick's part alone. Wright rejected requests that the jury be given a "comprehensive" set of questions and allowed to write a "meaningful" narrative in their own words.

When Wright ruled out a verdict of unlawful killing, members of de Menezes's family instructed their legal team to cease participating in the inquest and to challenge the decision through legal review. The family protested in the courtroom, wearing t-shirts saying, "Your Legal Right To Decide" and "Unlawful Killing Verdict." A gagging order was placed on the press and family to prevent them from publicising the legal challenge and the protest, while Wright gave "the wholly misleading impression that the family's legal counsel were in agreement with his decisions." Wright rejected requests to adjourn the inquest pending pursuit of the judicial review and proceeded with his summing up. He also issued the list of questions to the jury, effectively ensuring that the challenge could not succeed.

The jury's verdict was still the most damaging outcome to the Metropolitan Police, given these restrictions. By an eight-to-two majority they presented an open verdict, thereby rejecting the police claims that this was a lawful killing. They rejected claims by the officers that de Menezes had been warned, and criticised the police operation. Harriet Wistrich, the family's lawyer, called for the prosecution of officers for perjury.

Because of this, the CPS was forced reluctantly to review the inquest evidence. Stephen O'Doherty, a reviewing lawyer, acknowledged that the jury had not accepted the accounts from the two officers who killed de Menezes, identified at the inquest as C2 and C12, and that their evidence had been inconsistent.

O'Doherty said that he considered whether C2 and C12 had acted in self-defence, as it had been claimed that de Menezes stood and moved towards the officers when they entered the train. O'Doherty also considered whether they lied to the inquest about what was said and done prior to the shooting. He concluded that "although there were some inconsistencies in what the officers said...there were also inconsistencies in what passengers had said," and that "in the confusion of what occurred on the day, a jury could not be sure that any officer had deliberately given a false account of events."

This is a further attempt to exonerate the police, as the inquest had heard that officers had written up statements after discussions. The misleading written statements by police officers are here made equivalent to the recollections of eyewitnesses not heard publicly before. As the jury indicated, they were pretty sure that officers had given false accounts. They rejected C12's claim that he had shouted "armed police" prior to firing and disputed police claims that de Menezes approached the officers.

Further, O'Doherty said that he had reconsidered the question of culpability of officers in the police management team and that, "There was no fresh evidence which caused me to change my original decision that there was insufficient evidence to do so."

Jean Charles de Menezes's cousin, Vivian Figuierdo, told the press, "We condemn the CPS decision and reject the logic of their argument. The inquest put the truth out there for all the public to see, but the authorities want us to forget the truth to stop us getting justice. But we will never forget."

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