Status: Positive or Neutral Judicial Treatment

Neil Sharman v Her Majesty's Coroner for Inner North London v Irene Stanley

C1/2005/1165

Court of Appeal (Civil Division)

13 July 2005

[2005] EWCA Civ 967

2005 WL 1801223

Before: Lord Justice Buxton Lord Justice Scott Baker

Wednesday, 13th July 2005

On Appeal from the High Court Administrative Court List (Mr Justice Leveson)

Representation

Mr T Owen QC (instructed by Messrs Hickman & Rose) appeared on behalf of the Appellant.

Neither the Respondent nor the Defendant Appeared or were Represented.

Judgment

Wednesday, 13th July 2005

Lord Justice Buxton:

1 On 22nd September 1999 Mr Harry Stanley was shot dead on the streets of London by a police officer. It has been important to have in mind throughout these proceedings, as we are confident that everyone has had, what was said by the judge in this case, Leveson J, in paragraph 2 of his judgment:

> "[Mr Stanley] was entitled to be where he was and was doing absolutely nothing wrong. His death is a terrible tragedy and has entirely legitimately generated great public concern."

2 An inquest into the death of Mr Stanley took place in 2002. The verdict of that inquest was quashed by the Administrative Court in April 2003. There was a second inquest before a different coroner in October 2004, which resulted in a verdict of unlawful killing. In the proceedings with which we are concerned Chief Inspector Sharman, who was the police officer who fired the fatal shot, challenges that verdict. Leveson J so found and quashed the verdict. He held, first, that the coroner should not have left the verdict of unlawful killing to the jury and, secondly, that the summing up on that central issue had been inadequate.

3 Tuckey LJ, hearing an application on paper to appeal to this court, held that it was arguable that the judge was wrong on the question of whether unlawful killing verdicts should have been left to the jury, but that he had been clearly right in his criticism of the summing-up. He therefore refused permission to appeal to this court. Mrs Stanley, represented as she has been throughout by Mr Tim Owen QC, now renews that application in open court.

4 The facts of the case are set out in great detail by Leveson J who also relates a lot of the evidence and the disputes about the evidence's implications. The actual account given by the judge, as opposed to the conclusions to be based on it, has not, as I understand it, been seriously in dispute. I shall not repeat that account but shall, where necessary, refer to the

relevant parts of it. Anybody who thinks they need to know more about this matter than will be contained in this judgment can find it in Leveson J's judgment which is identified by the neutral citation number [2005] EWHC 857 Admin.

5 The “unlawful killing” alleged in this case was and could only have been a verdict of murder. Mr Sharman shot Mr Stanley intending to cause him at least grievous bodily harm. The defence was self defence: that Mr Sharman thought, albeit wrongly, that he was in imminent danger of being shot by Mr Stanley, and that he reacted reasonably in the circumstances as he thought them to be.

6 Although the matter seems to have been contested at an earlier stage, there was no real dispute that I could identify before us about the reasonableness of Mr Sharman's reaction, granted the assumption that he and his colleague thought they were in imminent danger. But there is great controversy about the latter point. Counsel for Mrs Stanley robustly said that the officers' account of what they saw and thought had been fabricated, that being the only evidence as to their beliefs, and fabricated in order to give an ex post facto justification for their use of lethal force.

7 The issue of self defence introduced an unusual and difficult element into the inquest. The judge correctly set out the elements of the law and what had to be proved (and this was the relevant issue in this case) to establish that self defence had not been made out and therefore murder had been committed.

8 The judge dealt with that in paragraphs 12 to 13(i) of his judgment in these terms:

> “12. At the heart of this case is the statutory defence set out in section 3 of the Criminal Law Act 1977 which permits ‘such force as is reasonable in the circumstances in the prevention of crime or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large’ and extends to providing a defence if reasonable force is used in self defence or defence of another. In the context of the criminal law, that defence (evaluated according to the subjective belief of the person seeking to rely on it, even if mistaken) must be negatived by the Crown to the criminal standard.
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> “13. It was not in issue in this inquest that if Mr Sharman may have believed that he or his fellow officer was under imminent threat of being shot with a sawn-off shotgun, unlawful killing was not made out. Thus, assuming that there was sufficient evidence for the jury to consider, the proper way to articulate the ingredients of the possible verdicts is:
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> (i) unlawful killing: a finding beyond reasonable doubt that the firearm was not discharged in the belief that one of the officers was under imminent threat of being shot with a sawn-off shot gun.”

9 The judge then put that requirement into the context of this case and into the context of the inquest as it had developed. He said this at paragraph 14 of his judgment:

> “I have put the matter in that way in order to formulate the test which must be considered by the coroner in deciding whether to leave the verdict of unlawful killing. It is whether there is sufficient evidence upon which the jury could safely come to the conclusion beyond reasonable doubt that the firearm was not discharged in the belief that one of the officers was under imminent threat of being shot with a sawn-off shotgun … [that is not] the same as the approach effectively propounded by Mr Owen that if there was sufficient evidence to justify the conclusion that the officers presented ‘a carefully fabricated justification of the use of deadly force’, there was necessarily sufficient evidence of unlawful killing to leave to the jury.”

10 The judge, as I have said, sets out the relevant evidence in some considerable detail in paragraphs 15 to 32 of his judgment. It was accepted on all sides that the test for determining whether a particular verdict should go to the jury is that proposed in the context of a trial on indictment in the well-known case of Galbraith : if, on one possible view of the facts, there is

evidence upon which a jury could properly come to the conclusion that the defence is guilty, then the case should go to the jury.

11 It will be seen that that rubric is very difficult to apply to a case such as the present where the issue is self defence. Of course the issue is not, as it is at the end of the prosecution case in a criminal trial, whether there is some evidence to support the prosecution's positive case. The issue is rather, whether there is sufficient evidence to suggest that the prosecution will succeed in negativing self defence.

12 I do not believe that that particular difficulty has ever been confronted in an inquest case, though Mr Owen told us of at least one case where necessity, as opposed to self defence (and the two defences, of course, are not by any means the same) had to be considered by a coroner's jury. Authority binding on this court does require Galbraith to be applied, but I would venture to think that it is more helpfully stated, as indeed Leveson J effectively stated it in the passage that I have just quoted, in the more generalised form that was suggested in an inquest context by Lord Woolf, Master of the Rolls, in ex parte Palmer in 1997. He said at page 19 of his judgment that the test that he would apply is:

> "Is this a case where it would be safe for the jury to come to the conclusion that there had been an unlawful killing?"

That, in this case, means that the question is whether it would be safe for the jury to come to the conclusion that the defence of self defence had been disproved beyond reasonable doubt.

13 When the coroner was directing the jury he gave them a series of written directions, direction 1 of which, under the heading "Belief of Necessity" in my respectful judgement correctly set out the law, though in general terms only:

> "Did the person who committed the purported act of self-defence honestly believe or may honestly have believed it was necessary for self-defence? If you are sure that the person who committed the act did <u>not</u> have an honest belief that it was necessary for self-defence, then the killing was unlawful."

14 But as the judge considered, and I respectfully agree, in evaluating whether in terms of Lord Woolf's direction it was safe to leave a rejection of self defence to the jury in the first place, the coroner did not apply that test. Two points arise, both identified by the judge. First, it is fairly clear that the coroner applied the general jurisprudence of Galbraith without averting to the particular case of self defence. The judge said this in paragraph 36 of his judgment:

> "In his ruling, the coroner set out the test in Galbraith and the decisions affecting coroners and expressed the view that this was a borderline case. He then analysed the ways in which the various strands of evidence were or could be consistent or inconsistent and went on:
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> > 'I am satisfied that there is sufficient evidence from Dr Rouse and Mr Brookes and Mr Bailey, taken together as a whole, with the factual evidence of all the witnesses in this case, the two officers and the three independent eye-witnesses, for the issue of unlawful killing to be properly put to the jury.
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> > In doing so, it is not my personal belief that this is the verdict that should be returned, but that is irrelevant. Again, going back to the Palmer case, the coroner has to carry out an evaluation exercise. He has to look at the evidence which is before him as a whole, saying to himself, without deciding matters, which are for the provenance of the jury.'"

15 In that passage and elsewhere the coroner in my view did not sufficiently identify the particular issue that arises in self defence; that is to say, that the prosecution has got to negative the defence. Galbraith , taken generally, is no sure guide to that. Secondly, he thought that if there was evidence on the basis of which the jury could reject the officers' account, they could safely conclude from that that the officers did not honestly believe in the imminent threat.

16 The judge dealt with this in a number of places, having averted to what he understood to be the approach of Mr Owen before the coroner, but he returned to it in an important passage in paragraph 44. He pointed out, and this is a matter to which I will have to come, that none of the advocates appearing before him wished this particular matter to be explored. He then continued in paragraph 44:

> "On the other hand, although it is not entirely clear from the ruling that the coroner adopted Mr Owen's approach, his Summary Grounds of Resistance put the matter beyond debate for he asserts:
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> '[I]t appeared to the Coroner (accepting the submissions of Mr Owen QC) that there was evidence which would entitle the jury to question the account of the officers and, taking account of all they had heard including assessing the credibility of the officers themselves, reject their account. The coroner accepted that if the account given by the officers was rejected by the jury, they were entitled to conclude that the killing was unlawful.'"

17 Mr Owen, in submissions before us today, has supported that approach. He argued that where there was only one account or justification given by the person asserting self defence, if that account of the perception and motivation of the defendant was rejected by the jury as being mendacious, they were entitled (Mr Owen accepted, not bound) but entitled to go on from that, as the coroner described it in paragraph 44 just quoted, and conclude that the killing was unlawful.

18 The judge did not agree with that analysis. He said this in his paragraph 42:

> "Making every assumption against the officers that Mr Owen seeks and discounting (whether correctly or not) the problems of perceptual distortion suggested by Mr Bentley, it is equally plausible that, having honestly believed that they were under imminent threat of being shot, when they discovered that Mr Stanley had no more than a table leg, they then panicked and felt that their true recollections would not be believed. The finding (even if correct) of subsequent dishonest fabrication does not exclude it and, given all the circumstances, it does not appear to me that there is any basis for being able to rebut that possibility beyond reasonable doubt."

19 I would respectfully agree with that approach. As the judge said, it is not enough, and simply does not follow, to assume that the availability of a verdict of unlawful killing, meaning in this case a verdict that beyond reasonable doubt the officers had no belief in an imminent threat to them, follows from the rejection as untruthful of the particular account that they gave. It was still necessary for the jury to look at the matter as a whole, and necessary for the coroner, in deciding whether to leave the matter to them, to look at the whole circumstances to see whether there was a realistic chance of it being possible to establish, beyond reasonable doubt, that the officers did not have the belief alleged.

20 That being the basis upon which as the judge found, in my judgement rightly, the coroner incorrectly approached the matter, the judge then reviewed the circumstances and background. That in his view made it extremely difficult to be sure that a defence of self defence could be rejected. He set that out at paragraphs 38 to 41 of his judgment.

21 Mr Owen, before us, has made certain criticisms of what the judge said. In my judgement all that the judge was doing was pointing to the considerable difficulties in the circumstances such as this case of reaching the degree of certainty that would be required before a verdict of unlawful killing could be brought in.

22 In particular I would quote paragraph 40 of the judge's judgment. He said this:

> "… it is undeniable that, without prior consultation between them, both officers fired. Mr Owen made it quite clear that he was not suggesting and had never suggested collusion before the shooting or a deliberate execution: he postulated the possibility that the officers had fired prematurely in panic or fear, perhaps because they had permitted

> themselves to be exposed and had not waited for backup. But if they were in panic or fear, it is necessary to ask in panic or fear of what? The most likely answer is that they were in panic or fear of being shot. In reply, [counsel for Mr Sharman] observed that if they were in fear, that was very close to establishing the lawful killing, particularly bearing in mind that the test is subjective and it does not matter that their fear is irrational, unreasonable or arises because they have wrongly exposed themselves. Whether 'very close' or not, it does not establish that verdict because panic may lead to a reaction without there being a fear of imminent threat but it is certainly an important background fact."

23 In my judgement the judge was right to stress the difficulties of the situation and the need for there to be careful consideration of the elements of the defence of self defence before the claim of belief in imminent attack could be rejected.

24 Placed in the context that absence of honest belief had to be proved beyond reasonable doubt, I am quite clear, as was the judge, that on Lord Woolf's test it would not be safe, on the facts of this case, for the jury to come to a verdict of unlawful killing. I therefore respectfully agree with the judge in his conclusion on the question of whether the coroner was justified in leaving unlawful killing to the jury. I do not think that the contrary is sufficiently arguable to allow of an appeal to this court.

25 Nor do I think, with respect to Mr Owen, that this is a suitable case in which the parameters and approach of a coroner to an unlawful killing case should be considered by this court, even if the court does not think it arguable that the judge in this case was wrong. I reject that suggestion not least because, as I have already indicated, the circumstances of this case, involving an investigation at coroner's court level of a difficult area of English criminal law, are not in the normal run of coronial cases, and not the proper subject matter for a general enquiry into how a coroner should address himself on matters of law.

26 I am, however, conscious that Tuckey LJ was of a different mind with regard to the arguability of the first of those issues, that is to say, whether in this case the coroner was justified in leaving unlawful killing to the jury. I must therefore go on to the other ground upon which the judge quashed the inquisition, which Tuckey LJ did not think merited consideration in this court.

27 In the grounds of appeal, under ground 1, the matter was stated thus at page 12 of the appeal bundle:

> "The inquest heard sufficient expert evidence for a jury reasonably to conclude that the actual belief of the Respondent at the time he discharged his firearm was that the deceased was beginning to turn, but not turned and definitely not pointing the item he believed to be a 'sawn-off shotgun' at PC Fagan in the boxer stance as described in his and Mr Fagan's testimony.
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> "Assuming that belief, the learned judge ought to have found that it was, in the first place, open to the jury properly to conclude that in all the circumstances the Respondent subjectively believed himself and PC Fagan to be facing a potential threat but not necessarily an *imminent threat* ."

28 But if a finding that Mr Sharman did not believe that they were facing an imminent threat, as opposed to a threat at all, is a necessary step for the jury, before they move from rejecting the officers' evidence to a verdict of unlawful killing, then the jury had to have that carefully explained to them.

29 Question 17, on which some weight has been placed, perhaps unfortunately described as an algorithm to enable the jury to complete their findings, was in these terms:

> "What threat or risk to their own health and safety did the officers believe or perceive themselves to be exposed?"

But the jury had to be told what the implications were for the various possible beliefs of the

lawfulness of the officers' actions. That, in my judgement, having carefully read all the passages in the summing-up which might bear on this, appears never to have been made clear.

30 The issue of imminence, now stressed as important, had to be very carefully handled, because it is usually, in the law of self defence, employed to exclude, or at least to review, issues involving pre-emptive strikes. That was plainly an issue here. I do not see that it was ever satisfactorily confronted.

31 The judge said, in paragraph 46 of his judgment:

> "Again, the summing up focused upon conclusions as to the general veracity of the officers rather than more specifically upon the existence at the time of a belief of an imminent threat of being shot."

32 I consider that to be a valid criticism. Mr Owen has taken us to passages where the coroner does deal, in some detail, with the elements of the offence and of the defence. But what was necessary was to concentrate on the one issue in this case, which was the belief of an imminent threat of being shot, and on the burden that would rest upon the prosecution in a criminal trial of rebutting that belief.

33 The judge also said, in paragraph 48, that:

> "If [the coroner] wanted to say that there was evidence which rebutted the officers' evidence that they believed that they were in imminent danger of being shot, he should have told them what that evidence was."

I am bound to say that I was surprised to hear Mr Owen submit to us that there was no need for such a direction, because of the direction already given as to unreasonable force. What the judge said was entirely right. In the essential matter of rebutting the officers' evidence there was necessary to have a focused and clear direction on the implications of all the evidence for that purpose. Like the judge, I do not find that in the coroner's directions.

34 I do not think, either, that the judge's concern about the summing-up, which he linked in paragraph 50 to the concern that he had already expressed about the coroner's view expressed before him that the jury could move directly from a rejection of the officers' accounts to a finding of unlawful killing, is a case of the judge submitting the summing-up to unreasonable scrutiny. I do not accept the submission that a standard lower than that which would be expected in the criminal court is necessarily to be applied, or can be applied, to an inquest such as this, which is directly concerned with the jury making a decision of exactly the same sort that would be required in a criminal trial, and on exactly the same rules as would be applied in a criminal trial.

35 Nor is it conclusive, and in the context of a coroner's inquest I am bound to say that it is hardly relevant, that all the parties involved in this matter appear to have agreed with the way in which the coroner proposed to deal with it. This was not an inter partes action. It was a case in which the coroner had to direct the jury according to the law. That one or other of the parties was content with him to approach the matter in the way that he did, for whatever reasons they may have had, cannot possibly inhibit a judge, reviewing that inquest, from applying the law accurately.

36 Leveson J said this in paragraph 50 of his determination:

> "Although I am very mindful that it is not appropriate to subject a coroner's summing up to the same close analysis that will be afforded to the summing up of a criminal trial, the significance of such a verdict cannot be over-emphasised. Its impact is felt not only by those directly involved but also by the wider public and society as a whole. There can be no room for confusion or misunderstanding. Even if I am wrong about my conclusion as to insufficiency of an evidential basis for a verdict of unlawful killing, this challenge is made out. Going back to the language of the coroner's submission, even if the jury were entitled to conclude that the killing was unlawful, the verdict does not follow inevitably from a rejection of the officers' accounts and it should not have been left effectively on the basis that it did."

I would respectfully agree, and in this aspect of the case in concord with Tuckey LJ. I do not think that there is any reasonable prospect of this court going behind that conclusion of the judge.

37 On those two grounds, therefore, I would refuse permission in this case. I would add a postscript in the same terms as the postscript that the judge added:

> **"Postscript**
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> In *Death Certification and Investigation in England, Wales and Northern Ireland* , *The Report of a Fundamental Review 2003* (Cm 5831) (Chairman: Tom Luce), a number of major changes were recommended to deal with what the Committee perceived to be defects in structure. One, at Chapter 9, paragraph 8(c) was:
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> > '[A] small number of exceptionally complex or contentious inquests should be taken by suitably trained Circuit Judges, and a yet smaller number of still more complex inquests should be heard by suitably prepared High Court Judges, each sitting as Coroner. This provision, too, should be sparingly used.
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> > Allocation of inquests at Circuit Judge level would be arranged by the Presiding Judge of the relevant Circuit on application from the Regional Co-ordinating Coroner. Inquests at the High Court level might largely be confined to those following disasters with multiple deaths, though we do not exclude other cases where appropriate. They would be arranged by the Chief Coroner in liaison with the Presiding Judges of the Circuits on application from the Regional Co-ordinating Coroner.'
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> "Counsel all complimented the coroner on the fair and considerate way in which he conducted this inquest but it is a matter of the greatest concern that four months short of five years following this tragic incident, I have now felt driven to quash the verdict in a second inquest. Mr Stanley's family have had to live through two such inquests and two applications for judicial review (the first brought by them, the second by one of the police officers); the uncertainty itself must have seriously aggravated their difficulties. The same point can be made in respect of the officers.
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> "This was always going to be a highly sensitive and difficult inquest to conduct. All deserved better from the system and it is sufficient if I add my weight to the call to implement the change recommended by the Fundamental Review. Without any disrespect to the coroner, this extremely difficult case would have benefited from judicial oversight at a higher level."

38 The task that the coroner faced in this case, dealing with a technical point of English criminal law that has exercised the leading authorities in that subject, underlines that he should not have been asked to deal with this difficult case. It merited the attention of somebody more regularly familiar with the issues in hand.

39 I am grateful to Mr Owen for the way in which he has put the matter. I hope I have made it clear that I well understand the concern that this case has caused, and understand the devoted way in which Mr Owen has pursued his client's interests, but I fear that for the reasons stated I am not prepared to grant permission in this case.

Lord Justice Scott Baker:

40 I agree.

ORDER: appeal dismissed; appellant's public funding assessment.


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