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SEC 5/3/1/14

Text of Ruling by the Gibraltar Coroner on procedural matters for the forthcoming Inquest on the Gibraltar 3.

DECISION

I shall deal with screening first.

2. I agree that the Court has the power to order the screening of witnesses if it is pursuaded that it is (a) necessary to protect its witnesses and (b) in the interest of justice. In this case Mr Laws suggests that interest is the result of balancing the interest of having an inquest with these witnesses screened (and to that extent the inquest will be flawed) and that of having an inquest where these witnesses will not be present. I use the expression "will" and not "may" because I gathered that was the underlying theme.

3. The initial question to answer is this:
Do these witnesses need to be safeguarded? Mr Laws asserted the risk of danger to life to the soldiers and their families existed and those were his instructions. Mr McGrory submitted that the risk to life should be shown to exist beyond reasonable doubt: was the danger real and genuine or was it fanciful. He submits that in giving evidence (a) they will be submitted to no greater risk to their lives than that which they have accepted as soldiers (b) they do not live in the community of Ireland which is where the deceased came from (c) it is unlikely that IRA terrorists will see their faces in Gibraltar and (d) he dismisses Mr Laws contention that the most innocent of persons might provide clues which will add up to an unacceptable risk by the soldiers for what clues could be given that would possibly lead the IRA to find them.

4. Notwithstanding Mr McGrory's submission I believe it to be a matter of self evident commonsense that the fears expressed by Mr Laws as to the safety of the military personnel involved and their families are there and I must pay heed to this. The less people who see these soldiers the better, provided it is consonant with the interests of justice. I rule that these witnesses must be screened from the public in which expression I include the press and information media. Also from members of the deceaseds' families and also from members of the Court staff. This latter may entail some difficulty having regard to the layout of the Court but that can be sorted out in due course.

/5. Next I have.....

5. Next I have to consider the position of the jury. I have listened attentively to Mr Laws and he has put the matter pursuasively but I do not consider that the jury can be excluded from a sight of these witnesses. In my view it would not be a proper exercise of my judicial discretion to shield the witnesses from their view. The Coroner's Court is the coroner and the jury. Consider the invidious position otherwise. If I were to believe a witness is not credible from his demeanour and comportment, what does a jury do who have only heard a voice. Hardly consonant with justice even in an inquisitorial matter. And I think Mr McGrory has a valid point when he remarked there would be 2 classes of witnesses as far as the jury was concerned. I rule therefore that the witnesses may not be screened from the jury. Because of the importance of this ruling I have reviewed again the considerations which impelled me to announce that this inquest would be held with a jury. I see no reason to change my mind. The inquest proper will be held with a jury.

6. I turn to consider the position of screening with regard to the lawyers i.e. Counsel and Solicitors. It goes against my deepest instincts and reverence for a lawyer's rights and privileges in the execution of his duties to debar him from seeing the witness he is examining. I accept Mr Laws' submission that the need for a lawyer to see a witness is different in the context of an adversarial trial but even in an inquisitorial enquiry it is only the most powerful of circumstances which should debar him from seeing a witness.

7. I am not wholly convinced that on the ground of the safety of the witness a lawyer should be so debarred. I have in mind the decision in the case of Samuels though I am not so naive to believe that no real danger may be apprehended by any of the soldiers if a lawyer does see his face if only for the reasons put forward by Mr Laws. That is not the only consideration and the question of their future operational use has to be borne in mind. Again I am inclined to say that this alone is not enough. The balance that has to be struck is the interest of the soldier and his employer the Crown and the interest of the public (in which the Crown is also interested) in the due administration of justice properly done and perceived to be properly done. Both considerations i.e. safety and operational use together go a long way but I nevertheless hesitate and it seems to me right, that in the exercise of my judicial discretion, such hesitancy should demand of me a declaration that I should proceed in a traditional manner.

/8. However that

8. However that is not the end of it. What has given me much anxiety is the position underscored that in certain circumstances the soldiers will not come. One of the difficulties in this inquest of which I have been very conscious from the outset is the matter of jurisdiction. Counsel touched upon the question. Can the soldiers' employer lawfully order the soldiers to come to Gibraltar to give evidence? That may be as may be and certain assurances have been given but in any case the court has no jurisdiction whatever over persons not within Gibraltar. I have no power to cause the soldiers to come to Gibraltar: they have to come voluntarily as far as this court is concerned, or so I apprehend. Furthermore I am concious of the provisions of Rule 18 by which a witness may not answer anything incriminating and I must so warn them. I find it hard to think, in the context of this inquest, of any significant question which will not be of that nature once they take the stand. The reality seems to be that unless the witnesses are screened I may not have a meaningful inquest and of course if they are screened it would be a flawed inquest in any case. Mr McGrory expressed his astonishment at this suggestion which he submitted savours of a bargain with the court. I do not see it in this light. In the context of all the difficulties it is a proper state of affairs to bring to my attention and in that context again I go back to the interest of justice. I consider all the points which have been made, not forgetting very importantly that I have ruled that the jury must see the witnesses. It is my judgement that I should not allow a witness to be screened from any lawyer who is examining the witness or any other lawyer who has or may properly wish to examine them.

9. That deals with the screening aspect. With regard to the scope of this inquest, I am content, having observed that it may be too limited in its expression, to approve as a matter of general guidance the approach suggested by Mr Laws namely:

In conformity with S.8(2) the investigation to be undertaken at the substantive hearing of the inquest should be limited as to the "How" thereof to 3 matters,

(a) Circumstances to death themselves.

(b) nature of perceived threat apprehended in Gibraltar and which lead to the transfer of responsibility for the arrest of the three deceased in the hands of the military.

(c) the resulting apprehension on the 6th March and the state of the soldiers' own minds of the kind of danger involved and their responses and reactions to it,

/provided .....

provided that this general direction will not preclude the inquest to enquire as to relevant matters preceeding the moment of the shooting.

10. I feel I should mention one matter at this stage since this is a preliminary application to set guidelines and help the inquest proceed with due dispatch and following Mr Laws's suggestion that it is possible to set bounds in the scope of the inquest because the events were clear, the identity of the 3 deceased was clear and what they intended to do was clear. And that other matter is this: it must not be forgotten that however clear those three elements might be, nevertheless at the time they came to their deaths they were neither armed nor did they have any detonating device nor was there any explosive found in the car left at Line Wall Road and while I have accepted Mr Laws' formula as a general indication it seems to me that the 3 factors I have alluded will exert their influence over the conduct of the inquest perhaps in a manner not yet appreciated by anyone.

11. As to public immunity interest that must be dealt with ad hoc during the inquest but I believe we are all alive to the situation.

12. There remains one more item to consider, and that is the release of the statements of the soldiers to representatives of the family. Notwithstanding the concession by the Crown I will adhere to the decision I have already communicated to Mr McGrory. I shall not provide copies of any statements to any interested party except that I think it would be proper to relax that ruling with regard to expert witnesses. Mr McGrory seeks sight of the pathologist's report and the ballistics expert and I see no reason why he should not have them as soon as possible on terms of utmost confidentiality. However I invite submissions on this point from other interested parties before I make a final ruling.

There being no objection and Mr McGrory having so undertaken I shall make these available to him.

13. I would suggest if anything further needs to be raised these should be done by correspondence and if necessary dealtwith on the 6th September before the jury is empanelled.

/14. Before I .....

14. Before I formally adjourn I refer to the Chief Justice's letter regarding the use of the Court room.

15. I now adjourn to the 6th September 1988 at 10.00 o'clock for the inquest proper and I should like to express my gratitude to counsel and Mr McGrory for their clear and succint arguments.

5th July 1988

Felix E Pizzarello
H M Coroner