

1 Tuesday, 9 December 2008

2 (10.00 am)

3 (Proceedings delayed)

4 (10.40 am)

5 (In the presence of the jury)

6 SIR MICHAEL WRIGHT: Good morning. I gather it's not only
7 me who has trouble with traffic, but don't worry.
8 I think what I will do, though, is possibly sit a little
9 later today, just to claw back the time that we have
10 lost this morning.

11 Ladies and gentlemen, your jury bailiffs have been
12 sworn from yesterday, so I will ask you to go with them
13 and continue your deliberations. Thank you very much.

14 (10.43 am)

15 (The jury retire)

3 (3.01 pm)

4 (In the presence of the jury)

5 SIR MICHAEL WRIGHT: I will read out
6 your question, first of all:

7 "Please would you clarify whether we are to arrive
8 at a unanimous response to each question in the verdict
9 questionnaire?"

10 These are my directions. Now that you have asked
11 that question I am in a position to give you a further
12 direction, and it is this: you should do your best to be
13 unanimous if you can about the short form verdict,
14 lawful killing or open verdict, and the three questions
15 about what happened in the carriage, and the nine
16 factors which is question 4(a) to (i).

17 However, if you cannot manage to achieve complete
18 agreement, the time has come when I am now able to
19 accept decisions from you on each of those matters where

20 at least nine of you are agreed. So in other words,
21 it's either 11 to none, unanimous; ten to one, or nine
22 to two.

23 It is obviously, and I stress this, it is desirable
24 that your decisions are unanimous ones if that is at all
25 possible. So I am going to ask you to try to achieve

1 that if you can, so that all 11 of you can sign the
2 inquisition document.

3 But if it is clear to you that that is not possible,
4 then I can accept majority decisions of ten to one or
5 nine to two, as the case may be, so long as at least
6 nine of you are the same nine in respect of each
7 decision. That is because at least nine people would
8 have to sign the inquisition, which means signing to
9 signify their agreement with each decision contained in
10 the document.

11 Please can I stress one vital matter: simply because
12 one of your number is departing at the end of the day's
13 proceedings, you are under no pressure whatsoever to
14 reach unanimity or majority verdicts by that time.
15 There is no pressure of that or any other kind. If you
16 do not reach decisions today on the basis that I have
17 just outlined, then I will give you further directions
18 tomorrow morning upon the new majority figures that
19 would apply to a jury of ten.

20 Would you like now, please, to go with the ushers
21 and continue your deliberations.

22 (3.04 pm)

23 (The jury retire)

18 (4.40 pm)

19 (In the presence of the jury)

20 SIR MICHAEL WRIGHT: The question, and

21 I will read it in full:

22 "We would like some additional guidance in how one
23 interprets question 4(d), the general difficulty in
24 providing an identification of the man under
25 surveillance, Mr de Menezes, in the time available and

1 in the circumstances after he had left the block at
2 Scotia Road."

3 You asked for an interpretation, and I'll do the
4 best I can. The general difficulty in providing
5 an identification refers to the difficulty that you may
6 think almost always would exist if you were trying to
7 identify someone whom you did not know and had never
8 seen before. That's the general difficulty.

9 The time available; well, Mr de Menezes was only
10 under surveillance for about half an hour or so, and was
11 not continuously observed in that time. I reminded you
12 earlier of which officers saw him and when. You will
13 appreciate that this was not one of those lifestyle
14 surveillance operations where a subject is kept under
15 surveillance for days or weeks; this was much more
16 limited than that, and you should bear that factor in
17 mind.

18 The circumstances; this refers to the difficulty
19 that you may think there is in trying to observe and
20 identify someone whilst, at the same time, trying to
21 keep yourself covert or secret as you do it. To put it
22 in the most simple terms, you can't very well go up to
23 the subject or the person -- not to use the police
24 word -- the person, stand in front of them and have
25 a really good long stare, can you? These are the sorts

1 of things, and those are the sorts of difficulties, that
2 this factor is directed towards.

3 As I have directed you, it is for you to say if you
4 think that, broadly speaking, is an accurate statement
5 of affairs; and I also directed you that, if you think
6 that the difficulty in obtaining an identification
7 played a part in the ultimate outcome as well, then your
8 answer to this factor should be "yes".

9 I hope that helps.

10 Would you like to withdraw, please, with your ushers
11 and continue your deliberations.

12 (4.44 pm)

13 (The jury retire)

20 (5.05 pm)

19 (5.07 pm)

20 (In the presence of the jury)

21 SIR MICHAEL WRIGHT: end of Well, it's 5.05; we have
22 made up the time that we lost this morning, so
23 ordinarily I would send you home at this point. But if
24 it so happens that I have called you back in at
25 a critical moment in your discussions so that you think

1 that a little more time tonight would help, then of
2 course you can have it. As I have told you many times
3 but I repeat it, you are under absolutely no pressure as
4 to time. So unless your foreman tells me otherwise, it
5 will be back tomorrow morning.

6 THE FOREMAN OF THE JURY: I think it's unlikely that we will
7 reach a result today.

8 SIR MICHAEL WRIGHT: That's fine. In that case, thank you
9 all very much.

10 Could the gentleman who is leaving us tonight
11 identify himself? I now must discharge you, as you
12 appreciate. I do so, if I may say so -- and I think
13 I probably speak, I am sure, for everybody in this
14 room -- that we do so with the greatest possible regret.
15 We are very, very sorry to lose you. It wouldn't be
16 right if I didn't discharge you without expressing my
17 thanks, and the thanks of everyone here, for the
18 sacrifice that you have put in by effectively giving up
19 your life for nine weeks, and unfortunately not being
20 able to see the end of it. We are very, very sorry, but
21 we do thank you most sincerely for your service.

22 Now you are discharged, you are not a member of the
23 jury any more, and so I am afraid you have to follow the
24 same purdah as they have to in relation to you; so that
25 you mustn't talk to each other about anything from now

1 on. I hope you have a good trip.

2 Very well, 10 o'clock tomorrow morning.

3 (5.10 pm)

4 (The court adjourned until 10.00 am on
5 Wednesday, 10 December 2008)

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