

1 Friday, 12 December 2008

2 (9.30 am)

3 (Proceedings delayed)

4 (9.35 am)

5 (In the presence of the jury)

6 SIR MICHAEL WRIGHT: Good morning, again, ladies and
7 gentlemen. All I am going to ask you to do, please,
8 with all the usual warnings that I have given you
9 before, would you like to go with your ushers now and
10 recommence your deliberations.

11 (9.38 am)

12 (The jury retire)

13 (Court rise)

14 (11.30 am)

15 Jury question

16 (In the absence of the jury)

17 SIR MICHAEL WRIGHT: I will read you the note:

18 "We would be grateful if you could give us further
19 direction. We have reached a majority short form
20 verdict with the same majority for all but one of the
21 questions, with the majority consisting of the same jury
22 members.

23 "However, for one of the factors for consideration,
24 ie question 4(a), we appear to have reached an impasse
25 where the same majority cannot be reached. We have not

1 reached an eight to two minimum."

2 I am not going to read the next sentence.

3 "However, the minority members are different from
4 those of the other questions and short form verdict."

5 The reason I haven't read the intervening sentence
6 is it discloses the voting split that they have reached.

7 I offer the following suggestion: that I should ask
8 the foreman if there is any reasonable possibility, if
9 I gave them a further period of time, they might break
10 that impasse on question 4(a). Depending on his answer,
11 we might either give them a bit longer or simply abandon
12 question 4(a).

13 Any views, please? Mr Hough.

14 MR HOUGH: Sir, for our part we would support that proposal.

15 The jury have evidently made every effort to come
16 together on what are quite a large number of points.

17 They use the word "impasse" no doubt advisedly to
18 suggest that they have truly gone as far as they can.

19 SIR MICHAEL WRIGHT: I think I still ought to ask them the
20 question.

21 MR HOUGH: I could not agree more, sir.

22 If the answer comes back "no", then I think it's
23 also appropriate that we discuss briefly what course you
24 propose to take but, before we discuss that, it's
25 probably best that you hear from my learned friends.

1 SIR MICHAEL WRIGHT: Yes, certainly.

2 MR HOUGH: In relation to the possibility of abandoning
3 a question entirely, sir, you will recall that we
4 reserved our position on this earlier in the week.

5 SIR MICHAEL WRIGHT: Yes.

6 MR HOUGH: It's our submission that provided the jury are in
7 agreement, with a minimum of eight agreeing on all
8 matters, on a sufficient number of points to constitute
9 a verdict, then that would be sufficient, and it is not
10 absolutely necessary to obtain a majority, the same
11 majority on everything, failing which one discharges the
12 jury. That would, in our submission, be --

13 SIR MICHAEL WRIGHT: That would be a catastrophe.

14 MR HOUGH: -- ridiculous and, in our submission, it's
15 consistent with the approach of Lord Bingham in the
16 Middleton case, giving coroners flexibility in the way
17 they elicit narrative verdicts, that if the jury simply
18 can't agree on a component of a narrative, then that
19 component must go.

20 SIR MICHAEL WRIGHT: Yes, I think that's probably right.

21 MR HOUGH: That's our submission on the correct approach to
22 follow, and we would support and endorse your approach
23 to how to manage the jury from now.

24 SIR MICHAEL WRIGHT: Thank you very much. Let's work round,
25 please. Who wants to go first? Mr Stern?

1 MR STERN: Sir, I adopt and endorse the submissions that
2 were made.

3 SIR MICHAEL WRIGHT: You think I should give them one more
4 chance? Or invite them to say whether they can break
5 the impasse or not?

6 MR STERN: I think that's necessary.

7 SIR MICHAEL WRIGHT: Yes, I agree with that. Ms Leek?

8 MS LEEK: Likewise, sir.

9 SIR MICHAEL WRIGHT: Yes, thank you. Mr Gibbs?

10 MR GIBBS: I agree entirely with what has been said.

11 SIR MICHAEL WRIGHT: Thank you very much. Mr Perry?

12 MR PERRY: I agree, sir.

13 SIR MICHAEL WRIGHT: Thank you. Ms Studd?

14 MS STUDD: Yes, I agree, sir, with this caveat: there are
15 one or two people who should be here in time for the
16 verdict. I wonder if we could reconvene at midday?

17 SIR MICHAEL WRIGHT: Yes, certainly. What I was going to
18 do, if the foreman says "no", I have -- with Mr Hough's
19 assistance -- a draft of, as it were, a short
20 instruction to give them which -- it might be helpful if
21 I read it out now.

22 MR HOUGH: Yes.

23 SIR MICHAEL WRIGHT: Having thanked them, I hope politely,
24 for their message, it reads:
25 "Would you now please do as follows:

1 "1. Would you please check that you have filled in
2 one copy of the verdict questionnaire.

3 "If you have not all agreed on the verdict and the
4 answers to all of the questions so that you are giving
5 a majority decision on any matters, would your foreman
6 please write to the right of each answer the names of
7 those jurors, if any, who have not agreed to the answer
8 given. Those names will not be published. I am only
9 asking this in order to check that there is a proper
10 majority so that at least eight of you can sign the
11 inquisition. As I told you, those who sign that
12 document must be in agreement on all points.

13 "3. Would you please look again at the draft
14 inquisition document and check that you are happy with
15 all the formal particulars, that is to say the name of
16 the deceased, the medical cause of death, the place of
17 death, et cetera. If you are content with those, you do
18 not need to do anything. If you are not content with
19 any of them, you should write me a note explaining the
20 difficulty."

21 Nothing controversial about paragraph 3; it's
22 paragraph 2. As you will see, what I am anxious to do
23 is to establish that the minority are the same people in
24 each case, and it follows the majority are the same
25 people in every case.

1 Does anybody have any problems with that?

2 MR HOUGH: Sir, may I propose a slight revision to this?

3 SIR MICHAEL WRIGHT: Yes.

4 MR HOUGH: At the end of point 1, the words "except for (a)"
5 should appear.

6 SIR MICHAEL WRIGHT: If we get the answer that they can't
7 get any further, then I will add to the instruction to
8 make a plain that we do not require an answer to
9 question 4(a).

10 MR HOUGH: Just for everybody's benefit and since this is
11 going to the jury, may I just set out what we propose is
12 changed. So the message would now read as follows:

13 "Would you please check that you have filled in one
14 copy of the verdict questionnaire, except the answer to
15 4(a).

16 One doesn't need the preamble in 2 relating to
17 majorities because we would know their view:

18 "2. Would your foreman please write to the right of
19 each answer the names of those jurors, if any, who have
20 not agreed to the answer given. Those names will not be
21 published. I am only asking this in order to check that
22 there is a proper majority so that at least eight of you
23 can sign the inquisition. As I told you, those who sign
24 that document must be in agreement on all points.

25 "Would you please look at the draft inquisition

1 document and check that you are happy with all the
2 formal particulars. If you are content with those, you
3 do not need to do anything", and so on.

4 Sir, what we would then propose is that, after they
5 have provided the document with the names on it, that
6 you and I should check that questionnaire to check the
7 questions are properly answered and that no more than
8 two names appear as dissenters.

9 If it has been properly completed, then a further
10 message would be sent to the jury to ask them to provide
11 a second copy of the verdict questionnaire, without the
12 names but with all the questions answered. That
13 questionnaire can then be photocopied so that you have
14 a copy and the foreman has a copy.

15 Then, before the jury are brought in, they would be
16 asked to sign the inquisition document on it's second
17 page so that when they are brought in there is a signed
18 inquisition in your hand.

19 That would ensure that you can then take the foreman
20 through the different answers.

21 SIR MICHAEL WRIGHT: Yes, I think that's probably right.

22 Everybody happy? In that case, ask the jury to come
23 down, please.

24 (11.40 am)

25 (In the presence of the jury)

1 SIR MICHAEL WRIGHT: Thank you for the message, which we
2 have noted carefully.

3 Mr Foreman, I have a question for you to which,
4 please, would you just answer "yes" or "no?"

5 THE FOREMAN OF THE JURY: Okay, sir.

6 SIR MICHAEL WRIGHT: If I gave you more time, another
7 period, do you think there is any reasonable prospect
8 that you would be able to break the impasse that you
9 have met on 4(a)? By all means look round at your
10 colleagues if you want to.

11 THE FOREMAN OF THE JURY: I think with a bit of time, yes.

12 SIR MICHAEL WRIGHT: You think you could?

13 THE FOREMAN OF THE JURY: Yes.

14 SIR MICHAEL WRIGHT: I am not going to ask you how long. In
15 that case, if you think there is a reasonable prospect,
16 then I will give you a little more time.

17 THE FOREMAN OF THE JURY: If there is no further direction,
18 then ...

19 SIR MICHAEL WRIGHT: I don't think there is any other
20 direction I can give you. By all means, in that case,
21 if you think there is a reasonable prospect that you can
22 come to an agreement -- remembering of course the
23 limitations on the agreement, that the people involved
24 have to be the same on each question, as with all the
25 other questions.

1 THE FOREMAN OF THE JURY: Right.

2 SIR MICHAEL WRIGHT: I am sure you will remember that.

3 THE FOREMAN OF THE JURY: Yes.

4 SIR MICHAEL WRIGHT: In that case I will invite you, please,
5 to go back with your ushers and see how you get on.

6 (11.42 am)

7 (The jury retire)

8 SIR MICHAEL WRIGHT: Very well. Thank you all very much.

9 (11.42 am)

10 (Court rise)

11 (12.50 pm)

12 (In the absence of the jury)

13 SIR MICHAEL WRIGHT: Jury, please.

14 (12.53 pm)

15 (In the presence of the jury)

16 VERDICT

17 SIR MICHAEL WRIGHT: Mr Foreman, I think, if you don't mind,
18 if I ask you to stand up, then everybody can see you and
19 see that it is you who is speaking.

20 I understand that the jury has reached a verdict and
21 answers to all questions and that at least eight of you
22 are agreed on all the answers given. Is that so?

23 THE FOREMAN OF THE JURY: That's correct, sir.

24 SIR MICHAEL WRIGHT: Thank you.

25 I am now going to ask you to give your answer on

1 each matter and to say in each case whether you are all
2 agreed or whether the answer has been reached by
3 a majority and, if so, the size of the majority in each
4 case, the numbers in each case.

5 The short form verdict is either lawful killing or
6 open verdict. What is your verdict?

7 THE FOREMAN OF THE JURY: Open verdict.

8 SIR MICHAEL WRIGHT: Thank you.

9 Question 1: did officer Charlie 12 shout the words
10 "armed police" at Mr de Menezes before firing; yes, no
11 or cannot decide?

12 THE FOREMAN OF THE JURY: No.

13 SIR MICHAEL WRIGHT: I should have asked you in relation to
14 the verdict: is that a unanimous verdict or by
15 a majority?

16 THE FOREMAN OF THE JURY: It's a majority.

17 SIR MICHAEL WRIGHT: How many agreed and how many disagreed?

18 THE FOREMAN OF THE JURY: Eight agreed, two disagreed.

19 SIR MICHAEL WRIGHT: In answer to question number 1, the one
20 you have just given, is that unanimous or by majority?

21 THE FOREMAN OF THE JURY: That is unanimous.

22 SIR MICHAEL WRIGHT: The second question is: did

23 Mr de Menezes stand up from his seat before he was

24 grabbed in a bear hug by Ivor; yes, no or cannot decide?

25 THE FOREMAN OF THE JURY: Yes, and that's unanimous.

1 SIR MICHAEL WRIGHT: Thank you.

2 Did Mr de Menezes move towards officer C12 before he
3 was grabbed in a bear hug by officer Ivor?

4 THE FOREMAN OF THE JURY: No, and that's unanimous.

5 SIR MICHAEL WRIGHT: Thank you.

6 Turning to the factors for consideration, do you
7 consider that any of the following factors caused or
8 contributed to the death of Mr de Menezes: (a) the
9 suicide attacks and attempted attacks of July 2005 and
10 the pressure placed upon the Metropolitan Police in
11 responding to the threat?

12 THE FOREMAN OF THE JURY: Cannot decide, sir.

13 SIR MICHAEL WRIGHT: Again, is that inability to decide by
14 a majority or unanimous?

15 THE FOREMAN OF THE JURY: That's a majority of eight to two.

16 SIR MICHAEL WRIGHT: Thank you. (b) a failure to obtain and
17 provide better photographic images of the suspect
18 Hussain Osman for the surveillance team?

19 THE FOREMAN OF THE JURY: Yes, that's unanimous.

20 SIR MICHAEL WRIGHT: (c) a failure by the police to ensure
21 that Mr de Menezes was stopped before he reached public
22 transport?

23 THE FOREMAN OF THE JURY: Yes, unanimous, sir.

24 SIR MICHAEL WRIGHT: Thank you. (d) the general difficulty
25 in providing identification of the man under

1 surveillance, Mr de Menezes, in the time available and
2 in the circumstances after he had left the block at
3 Scotia Road?

4 THE FOREMAN OF THE JURY: No, and that's unanimous.

5 SIR MICHAEL WRIGHT: (e) the innocent behaviour of
6 Mr de Menezes which increased the suspicions of some
7 officers?

8 THE FOREMAN OF THE JURY: No, that's a majority of eight to
9 two, sir.

10 SIR MICHAEL WRIGHT: Thank you. The fact that the views of
11 the surveillance officers regarding identification were
12 not accurately communicated to the command team and the
13 firearms officers?

14 THE FOREMAN OF THE JURY: Yes, unanimous.

15 SIR MICHAEL WRIGHT: (g) the fact that the position of the
16 cars containing the firearms officers was not accurately
17 known to the command team as the firearms officers were
18 approaching Stockwell station?

19 THE FOREMAN OF THE JURY: Yes, unanimous.

20 SIR MICHAEL WRIGHT: (h) any significant shortcomings in the
21 communications system as it was operating on the day
22 between the various police teams on the ground and with
23 New Scotland Yard?

24 THE FOREMAN OF THE JURY: Yes, unanimous again, sir.

25 SIR MICHAEL WRIGHT: (i) a failure to conclude at the time

1 that surveillance officers should still be used to carry
2 out the stop of Mr de Menezes at Stockwell station, even
3 after it was reported that specialist firearms officers
4 could perform the stop?

5 THE FOREMAN OF THE JURY: Yes, unanimous.

6 SIR MICHAEL WRIGHT: That concludes your verdict. I am very
7 much obliged to you, Mr Foreman, thank you.

8 THE FOREMAN OF THE JURY: Thank you.

9 SIR MICHAEL WRIGHT: I should ask you one other thing:
10 I understand, as you have not sent me a note, that you
11 are all content with the inquisition, which is the
12 formal document setting out the name of the deceased,
13 date of death, place of death, medical cause of death
14 and so forth. Is that correct?

15 THE FOREMAN OF THE JURY: Yes, sir, that's right.

16 SIR MICHAEL WRIGHT: Very well, thank you. I understand
17 that eight of you are agreed on all matters and those
18 eight have signed the inquisition.

19 THE FOREMAN OF THE JURY: That's correct, sir.

20 SIR MICHAEL WRIGHT: Thank you very much indeed; sit down.

21 First of all, may I sincerely thank you, ladies and
22 gentlemen, for the dedicated service that you have given
23 over the last three months. You have attended
24 conscientiously and promptly and you have shown, if
25 I may say so without sounding patronising, diligent

1 attention throughout the inquest. You have also
2 demonstrated obvious care in reaching your decisions.

3 We all appreciate, although it may not always have
4 been obvious, we do appreciate the commitment of time
5 that you have had to make, and I know I speak for
6 everyone in this courtroom and for myself when I say
7 that we are all extremely grateful to you. Thank you
8 very much indeed.

9 May I also, before I part with this inquest, thank
10 all at Southwark Council and here at the Brit Oval for
11 their hard work, which has contributed enormously to the
12 smooth running of this inquest.

13 It is right that I should say at this stage that it
14 is my intention to make a report under Rule 43 of the
15 Coroners' Rules 1984, as amended by the Coroners'
16 Amendment Rules 2008.

17 Under that rule such a report may be made where
18 a Coroner is holding an inquest into a person's death,
19 the evidence gives rise to a concern that circumstances
20 creating a risk of other deaths will occur, or will
21 continue to exist in the future, and in the Coroner's
22 opinion action should be taken to prevent the occurrence
23 or continuation of such circumstances or to eliminate or
24 reduce the risk of death created by such circumstances.
25 In such a case, the Coroner may report the circumstances

1 to a person whom he believes may have power to take such
2 action.

3 I intend to make a report to the Commissioner of
4 Police for the Metropolis and to the Metropolitan Police
5 Authority, and that report will explain briefly what
6 police practices I consider call for review.

7 Under the Coroners' Rules, such a report should also
8 be sent to the Lord Chancellor and to properly
9 interested persons, and that will happen in this case.

10 I shall also send a copy to the Home Secretary for
11 information.

12 The Commissioner and the Authority will be obliged
13 to respond to the report saying what action has been or
14 will be taken or saying why no action is proposed.

15 Under the rules, it is for the Lord Chancellor to
16 decide whether and how to publish a report and the
17 responses to it. However, I would expect the report to
18 be published in this case.

19 I shall not say at this point what the report will
20 contain, because it requires careful consideration and
21 because it is only right that I should take proper
22 account of the verdict and conclusions of the jury.
23 However, I expect to produce the report within the next
24 month, and the Commissioner and the Authority will then
25 have 56 days to respond.

1 In preparing my report, I shall take account of all
2 the evidence in this inquest and of further material
3 which has been provided to me concerning how the
4 Metropolitan Police have developed their practices since
5 July 2005.

6 I should like to take this opportunity to thank
7 Command Moir Stewart of the Metropolitan Police Service
8 for the thorough and careful work he has done in
9 producing a detailed statement and supporting materials
10 to assist me.

11 I should also like to thank the IPCC and their legal
12 representatives for the help in identifying areas for
13 consideration.

14 Finally, it is only right that these proceedings
15 conclude with me expressing sincere condolences to the
16 family of Mr de Menezes. On any view of this case, this
17 was a tragic and terrible event, the killing of
18 an entirely innocent young man.

19 That concludes the proceedings at this inquest.

20 (1.03 pm)

21 (The court adjourned)

22

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