



Neutral Citation Number: [2018] EWHC 3443 (Admin)

Case No: CO/2450/2018

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
DIVISIONAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12/12/18

Before :

LORD JUSTICE HICKINBOTTOM
and
MRS JUSTICE WHIPPLE

IN THE MATTER OF THE INQUEST INTO THE DEATH OF HELEN BAILEY

**HM SENIOR CORONER FOR
BIRMINGHAM & SOLIHULL**

Applicant

(1) MARGARET BAILEY
(2) ADRIAN BAILEY
(3) JOHN SIR (formerly KENNETH ETCHELLS)

**Interested
Parties**

Bridget Dolan QC (instructed by Birmingham City Council Legal) for the Applicant
The Interested Parties neither appearing nor being represented

Hearing date: 12 December 2018

Approved Judgment

Lord Justice Hickinbottom:

1. This is an application by HM Senior Coroner for Birmingham and Solihull under section 13 of Coroners Act 1988 (“the 1988 Act”) for an order quashing the inquest held on 10 March 1976 into the death of Helen Bailey, and directing a fresh investigation and inquest be held.
2. Helen was born on 5 March 1967. She lived in Perry Barr, Birmingham. At about 3.30pm on 10 August 1975, when she was aged 8, she went out to play. She did not come home. At just after 9pm, after a search had been made, her mother notified the police that she was missing. The following morning, Helen’s body was found in dense woodland in the Booth Farm area of Perry Barr. She was lying on her back, and the side of her throat had been cut.
3. An inquest was held at Birmingham Coroner’s Court, at which evidence from Dr Frederick Griffiths was received. Dr Griffiths was a Home Office pathologist, who conducted a post mortem examination on the day of Helen’s death. His report dated 11 August 1975 noted that there did not appear to be any evidence of a struggle, and that there were no pressure marks around the external orifices of respiration. In his view, there was no indication of manual strangulation. Dr Griffiths described the wound on Helen’s neck as “a shallow cut”. However, although shallow, the cut had perforated the jugular vein.
4. In Dr Griffiths’ opinion, the cause of death was the cut to the throat. He stated that he had a lot of experience of the victims of murder with serious injuries to the neck; and the circumstances of Helen’s death lacked the essentials and hallmarks of a homicidal attack. He considered that it may have been an accident or a practical joke that had gone wrong, the latter being his preferred explanation.
5. The jury recorded the medical cause of death as “Wound to the throat”, but returned an open verdict, “there being insufficient evidence to say when, where and by what means she came by her death”.
6. In 1979, a Kenneth Etchells (now known as John Sir) gave a confessional account to two psychiatric healthcare professionals. He said that he had strangled Helen but, realising that she was still alive, he had then cut the side of her neck with a penknife. That account appears to have contained information that was thought by the police not to have been in the public domain in 1979.
7. For reasons that are not yet clear, no further investigation of Helen’s death was conducted until about 2014, when the West Midlands Police re-opened the investigation. They obtained an expert report from Dr Nathaniel Cary, a Home Office Registered Consultant Forensic Pathologist. Dr Cary reviewed all available documentary and photographic evidence. In his report of 11 February 2014, he disagreed with the characterisation of the cut to the neck as shallow. In his view, the post mortem photographs showed that the cut went through subcutaneous fat and some neck musculature. The margins of the incision suggested that the cut could have consisted of at least two cutting actions. Furthermore, Dr Cary noted typical signs of asphyxia, including petechiae in the skin of the face, eyelids and forehead. Such petechiae are, he said, a recognised sign of increased venous pressure resulting from compression of the neck. Dr Cary concluded that this was “a clear case of

homicide”, with Helen being strangled before her throat was cut with a sharp bladed weapon when she was either unconscious, already dead or dying. In his opinion, that was the medical cause of death, i.e. compression of the neck in association with an incising wound to the neck.

8. That was, of course, consistent with Mr Sir’s account. However, following the re-investigation, the Crown Prosecution Service (“the CPS”) decided against prosecuting Mr Sir. On receiving that decision from the CPS, West Midlands Police approached the Coroner requesting that she apply for a fresh investigation and inquest. On 14 March 2018, the Attorney General gave his fiat for such an application.

9. This application is made under section 13 of the 1988 Act which, under the heading “Order to hold investigation”, provides (so far as relevant to this application):

“(1) This section applies where, on an application by or under the authority of the Attorney General, the High Court is satisfied as respects a coroner (“the coroner concerned”) either—

...

(b) where an inquest or an investigation has been held by him, that (whether by reason of fraud, rejection of evidence, irregularity of proceedings, insufficiency of inquiry, the discovery of new facts or evidence or otherwise) it is necessary or desirable in the interests of justice that an investigation (or as the case may be, another investigation) should be held.

(2) The High Court may—

(a) order an investigation under Part 1 of the Coroners and Justice Act 2009 to be held into the death either—

(i) by the coroner concerned; or

(ii) by a senior coroner, area coroner or assistant coroner in the same coroner area;

(b) order the coroner concerned to pay such costs of and incidental to the application as to the court may appear just; and

(c) where an inquest has been held, quash any inquisition on, or determination or finding made at that inquest.”

10. Section 13 requires this court to answer a single question, namely whether the interests of justice make a further inquest either necessary or desirable (Attorney General v HM Coroner of South Yorkshire (West) [2012] EWHC 3783 (Admin)). In that case, which concerned the Hillsborough Inquests, Lord Judge LCJ said (at [10]):

“... [I]t seems to us elementary that the emergence of fresh evidence which may reasonably lead to the conclusion that the substantial truth about how an individual met his death was not revealed at the first inquest, will normally make it both desirable and necessary in the interests of justice for a fresh inquest to be ordered.... What is more, it is not a pre-condition to an order for a further inquest that this court should anticipate that a different verdict to the one already reached will be returned. If a different verdict is likely, then the interests of justice will make it necessary for a fresh inquest to be ordered, but even when significant fresh evidence may serve to confirm the correctness of the earlier verdict, it may sometimes nevertheless be desirable for the full extent of the evidence which tends to confirm the correctness of the verdict to be publicly revealed.”

11. In all of the circumstances of this case, I am persuaded that the interests of justice do make a further inquest at least desirable. There is fresh expert pathologist evidence as to mechanism and cause of death that contradicts the opinion of the pathologist upon whose evidence the jury’s open verdict was made. In my view, the emergence of this new evidence may well lead to the conclusion that the truth of how Helen met her death was not revealed at the first inquest, thus falling within the scope of the Lord Chief Justice’s observations in the Hillsborough Inquests case. In coming to the conclusion that a new investigation and inquest is in the interests of justice, I also bear in mind that an open verdict is a verdict of last resort, and a particularly unhappy conclusion to an inquest the very object of which is to determine questions left open by such a verdict, including how the deceased died (see Howlett v HM Coroner for the County of Devon [2006] EWHC 2570 (Admin) at [14] per Maurice Kay LJ). In this case, upon a re-investigation and inquest, there is a real possibility of a different verdict.
12. In my view, this a strong application which, subject to the views of my Lady, I would grant. I would quash the jury’s findings in relation to Helen’s death made at the inquest on 10 March 1976; and I would order a fresh investigation and inquest.

Mrs Justice Whipple :

13. I agree.