Neutral Citation Number: [2005] EWHC 857 (Admin)

Case No: CO/6017/2004

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12 May 2005

Before :

MR JUSTICE LEVESON

- -

	THE QUEEN **on the application of NEIL SHARMAN**	**Claimant**
	- and –	
	HER MAJESTY'S CORONER FOR INNER NORTH LONDON	**Defendant**

- -

Edmund Lawson Q.C. and Michael Egan (instructed by **Martin Murray & Associates, West Drayton**) for the Claimant
Tim Owen Q.C. and Danny Friedman (instructed by Hickman & Rose, London) for Irene Stanley, the First Interested Party
Michael Wood Q.C. and Samantha Leek(instructed by **Director of Legal Services, Metropolitan Police**) for the **Commissioner of the Metropolitan Police, the Second Interested Party**
Mr Gerard Clarke (instructed by **Independent Police Complaints Commission**) for the **Independent Police Complaints Commission, the Third Interested Party**
The Defendant did not appear and was not represented.

Hearing dates: 27-28 April 2005

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Judgment**Mr Justice Leveson :**

1. At 7.44 pm on 22nd September 1999, a member of the public made a 999 telephone call to the police and reported that a man had left the Alexandra Public House in Hackney with "what actually looks like a sawn off shotgun"; he said that "it was tightly wrapped in a blue plastic bag". The call was made in complete good faith and was properly treated very seriously. The information ("Irish male, wearing a dark suede coat, apparently in possession of a sawn off shot gun") was disseminated by a despatcher at New Scotland Yard at 7.46 pm and an armed response vehicle, driven by Constable Kevin Fagan in which the duty inspector, Chief Inspector Neil Sharman, was a passenger, responded. It

was made clear that the shotgun was allegedly in a plastic carrier bag. They travelled to the area and saw Henry Bruce Stanley with what appeared to them to be a sawn off shot gun wrapped in a blue plastic bag. The officers challenged him and because of their perception of his reaction (which at this stage I put entirely neutrally), each discharged his firearm. The bullet from the weapon fired by Constable Fagan inflicted an injury to Mr Stanley's left hand; the bullet from Chief Inspector Sharman's weapon entered above his left ear and killed him. Less than 11 minutes had elapsed since the first call to the police: it was not yet 7.55 pm.

2. Although the clear shape within the plastic bag did correspond to an uncanny extent with the shape of a sawn off shot gun (and nobody suggests that the police were wrong to proceed on the basis that it was a potentially lethal firearm), it was, in fact, a table leg. Mr Stanley (whose Scottish accent was mistaken for an Irish accent) was lawfully going about his business walking home having collected a coffee table leg which had been repaired. He appears to have been slightly the worse for wear having consumed an amount of alcohol that afternoon. Whether that caused him to react to the police challenge in the way that he did does not matter: he 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.

3. A comprehensive investigation into the incident was conducted by the Surrey Police; this was overseen by the Police Complaints Authority. Between 17th and 22nd June 2002, an inquest was held. For reasons which do not matter, on 29th April 2003, without opposition from the previous Coroner or the Interested Parties, the inquisition was quashed. A second inquest before a different Coroner (Dr Andrew Scott Reid) was conducted between 18th and 29th October 2004. This led to a verdict of unlawful killing.

4. With the permission of the single judge, Chief Inspector Sharman (who fired the fatal bullet) now seeks to quash that inquisition on the grounds that there was either no evidence or manifestly insufficient evidence to justify a verdict of unlawful killing which, accordingly, should never have been left for the jury to consider. Criticism is also made of the summing up. The Coroner has filed summary grounds of resistance to assist the Court but has taken no part in the proceedings. Mr Stanley's widow, on the other hand, strenuously defends the Coroner's approach (which accords with the submissions made on behalf of Mr Stanley's family at the time). The Commissioner for the Metropolitan Police supports the officer's submission but Mr Michael Wood QC, on his behalf, did not seek to advance any independent argument. Having regard to the public interest in the case, the Independent Police Complaints Commission was also represented but remained neutral as to the merits and made no submission as to the challenge or the family's response.

The Legal Framework

5.An inquest with a jury is mandatory where there is "reason to suspect that … the death … resulted from an injury caused by a police officer in the purported execution of his duty" (sections 8(1) and (3) of the Coroners' Act 1988) and is required to lead to an inquisition which sets out "so far as such particulars have been proved – (i) who the deceased was and (ii) how, when and where the deceased came by his death…" (section s.11(5) of the Act and see also Rule 36 of the Coroners Rules 1984). Rule 42 of the same Rules makes it clear that no verdict "shall be framed in such a way as to appear to determine any question of (a) criminal liability on the part of a named person…".

6."How" must be interpreted to mean "by what means and in what circumstances": the inquest is required both in its scope and its conclusions to identify in accordance with the requirements of Article 2 of the European Convention of Human Rights whether the use of fatal force against the deceased was lawful or otherwise. The investigation must be such that its safeguards are "practical and effective" (see *Jordan v. U.K.* (2003) 37 EHRR 2 at paragraph 102 citing *McCann v. U.K.* (1997) 21 EHRR 97). Although in the context of this case, it was agreed that a narrative verdict was not required, the importance of the inquiry and the interest at stake are underlined by *R. v. Secretary of State for the Home Department ex parte Middleton* [2004] 2 AC 182, in which Lord Bingham of Cornhill observed (at paragraph 16):

> "It seems safe to infer that the state's procedural obligation to investigate is unlikely to be met if it is plausibly alleged that agents of the state have used lethal force without justification, if an effectively unchallengeable decision has been taken not to prosecute and if the fact-finding body cannot express its conclusion on whether unjustifiable force has been used or not, so as to prompt reconsideration of the decision not to prosecute."

7.At the conclusion of the evidence, the Coroner must decide what verdicts are open to the jury. The approach (similar to that adopted by the criminal courts as propounded in *R. v. Galbraith* [1981] 1 WLR 1039 in relation to whether there is a case to answer) is exemplified in *R. v. H.M. Coroner for Exeter and East Devon ex parte Palmer*, unreported, 10th December 1997, by Lord Woolf MR (also in relation to leaving a verdict of unlawful killing). Describing the duty of the Coroner to act "as a filter to avoid injustice", he explained:

> "In a difficult case, the Coroner is carrying out an evaluation exercise. He is looking at the evidence before him as a whole and saying to himself, without deciding matters which are the province of the jury, 'Is this a case where it would be safe for the jury to come to the conclusion that there had been an unlawful killing?' If he reaches the conclusion that, because the evidence is

> so inherently weak, vague or inconsistent with other evidence, it would not be safe for a jury to come to the verdict, then he has to withdraw the issue from the jury. In most cases there will only be a single proper decision which can be reached on any objective assessment of the evidence. Therefore one can either say that there is no scope for *Wednesbury* reasonableness or there is scope, but the only possible proper decision which a reasonable coroner would come to is either to leave the question to the jury or not, as the case may be.
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> However, as was pointed out by the Lord Chief Justice in *Galbraith*, in these cases there will always be borderline situations where it is necessary for the Coroner to exercise a discretion. It is only in such a situation that he has any discretion. It follows, therefore, that the test of reasonableness enunciated in *Wednesbury* has to play in relation to decisions as to whether to leave a particular issue to the jury or not, a role which is extremely limited".

8. Mr Edmund Lawson Q.C., for Chief Inspector Sharman, relied upon further observations of Lord Woolf MR in the subsequent decision of *R. v. Inner South London Coroner ex p. Douglas-Williams* [1999] 1 All ER 344, as suggesting that the Coroner has a wider power and, thus, duty than that of a judge applying *Galbraith* to a submission of no case to answer with the result that he could withdraw a verdict in certain circumstances even if, strictly, he was not bound to do so. Lord Woolf said (at 348):

> "…I have come to the conclusion that there is considerable force in [counsel for the coroner]'s argument that a broader approach is appropriate. There is no prosecutor in relation to an inquest and, while an inquest is a court, the coroner's role is more inquisitorial, even when sitting with a jury, than that of a judge. A prosecutor has considerable discretion as to what charges he prefers and the trial takes place on those charges. There are no charges at an inquest. And a coroner must decide the scope of the inquiry which is appropriate and the witnesses to be summonsed. He therefore must, at least indirectly, have a greater say as to what verdict the jury should consider than a judge at an adversarial trial. However, the difficulty is that if the *Galbraith* approach is not appropriate, what approach is correct? It is for the jury and not the coroner to decide facts on the evidence they have heard … .The conclusion I have come to is that, so far as the evidence called before the jury is concerned, a coroner should adopt the *Galbraith* approach in deciding whether to leave a verdict. The strength of the evidence is not the only consideration and, in relation to wider issues, the coroner has a broader discretion. If it appears there are circumstances which, in

> a particular situation, mean in the judgment of the coroner, acting reasonably and fairly, it is not in the interests of justice that a particular verdict be left to the jury, he need not leave that verdict. He, for example, need not leave all possible verdicts just because there is technically evidence to support them. It is sufficient if he leaves those verdicts which realistically reflect the thrust of the evidence as a whole…."

9. If Mr Lawson is correct, it is difficult to see how Lord Woolf envisaged the application of this approach. On the face of it, if a verdict is open to a jury on the evidence, how can it be said to be in the interests of justice that it not be left for the jury to consider? The answer to this conundrum was provided by Mr Tim Owen Q.C. (who appeared for Mrs Stanley as he had for the family at the inquests). The case concerned a complaint about the way in which the coroner left two different species of unlawful killing (unlawful act manslaughter and gross negligence manslaughter) and his refusal to leave a verdict of neglect. Lord Woolf was doing no more than saying that the coroner should, within the spectrum of different verdicts open to the jury, decide which "realistically reflected the thrust of the evidence" rather than be required to indulge in an analysis of each and every conceivable permutation. That is not the problem here; in my judgment, *Douglas-Williams* takes an analysis of the coroner's role in this case no further.

10. Having said that, however, I agree with Mr Lawson that the need for the coroner to act "as a filter to avoid injustice" is of vital importance for the reasons explained by Collins J in *R (Anderson & ors) v. HM Coroner for Inner North Greater London* [2004] EWHC 2729, 26th November 2004 who also expressed words of caution. He observed:

> "21. An inquest is not concerned to attach and is indeed expressly prohibited from attaching civil or criminal liability to anyone in particular. It is concerned only to determine who the deceased was and how, when and where the deceased came by his death. However, a finding of unlawful killing will almost inevitably be regarded as a condemnation of the actions of one or a number of easily identifiable persons. It is presented in the media and regarded generally as a positive finding that that person or persons between them have been guilty of a criminal offence, in this case manslaughter…
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> 22. … [I]t must be borne in mind that the safeguards applicable to a trial of anyone charged with a criminal offence are not in place. … The absence of any opening or closing speeches at inquests means that the need for clarity in a summing-up becomes all the more important. That is not to say that a summing-up should be subjected to a close analysis or that the absence of a particular form of words or indeed of particular directions will necessarily be fatal. But the jury must know clearly what they must find as

facts in order to justify any verdict, especially one which decides that a criminal offence has caused the death. …"

11. Against that background, what would have to be established for different verdicts and the meaning of such verdicts in the context of this case can be stated comparatively shortly. It cannot be gainsaid that discharging a firearm at another person gives rise to the almost inevitable inference of an intention, at the least, to cause grievous bodily harm; that the person doing so is a soldier or a police officer acting in the course of his duty makes no difference: see *R. v. Clegg* [1995] 1 AC 482. Thus, a verdict of unlawful killing (which would not name the person responsible) effectively means a finding of murder. To bring in such a verdict, the coroner's jury must be directed that they should be "satisfied [of it] beyond all reasonable doubt or, as sometimes said, satisfied so that they are sure" (see *R. v. H.M. Coroner for Wolverhampton ex parte McCurbin* [1990] 1 WLR 719 at 728A per Woolf LJ).

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.

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:

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;

ii) lawful killing: a finding, on the balance of probabilities, that Chief Inspector Sharman believed, albeit mistakenly, that he or Constable Fagan was under imminent threat of being shot with a sawn-off shot gun;

iii) open verdict: a rejection of the proposition that Chief Inspector Sharman may have believed that he or Constable Fagan was under imminent threat of being shot with a sawn-off shot gun but an inability to conclude, beyond reasonable doubt, that such was not the case.

14. 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 shot gun. That is very slightly different to the test propounded by Mr Lawson (was there any/sufficient evidence to disprove to the criminal standard … Sharman's assertion as to his belief at the time of firing) only because of the potential for confusion between his assertions as to belief and his account of the facts. Neither is it 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. I shall return to both later in this judgment; first, I must turn to the facts.

The Evidence

15. It was common ground that the 999 call was made in completely good faith and that the police reacted to it appropriately. A number of police units was engaged (including firearm armed response units from SO19) and travelled to the vicinity of the Alexandra Public House at the junction of Victoria Park Road and Lauriston Road, Hackney. One such unit – the first to arrive – consisted of Chief Inspector Sharman who was the Duty Inspector for SO19 for that tour of duty and Constable Fagan, who is a similarly trained officer. They searched the area and saw Mr Stanley walking into Fremont Street from Victoria Park Road in possession of what they also considered looked like a sawn off shot gun in a plastic bag. They left their vehicle and ran to the junction issuing a challenge to Mr Stanley who was turned away from them.

16. What happened in the next seconds is absolutely central: it was the subject of detailed evidence not only from the two officers but also from a number of independent witnesses who were also in the vicinity. Thus, Mr and Mrs Carpenter were on foot on the other side of Victoria Park Road opposite the junction with Fremont Street. Mr Cummings, a passing motorist who had pulled over in Victoria Park Road to allow the police car to pass, also spoke of what he saw as he drove by the junction of Fremont Street. In addition, there was a body of other evidence dealing with what happened thereafter including expert evidence that dealt with the pathological and ballistic examinations along with other firearms operations evidence. Because it is this evidence that formed the basis of the submissions as to the verdicts open to the jury, I must analyse it in a little detail.

17. At the time that Mr Stanley was challenged, the two officers were somewhat apart with Chief Inspector Sharman to the left of Constable Fagan. Mr Fagan explained to the jury that he shouted to Mr Stanley to drop his weapon. He then described what happened in these terms:

> "The man who I now know as Harry Stanley stopped and with a deliberate motion turned via his left hand side. As he turned via his left hand side, he started to level the cylindrical object, the object in the bag from pointing downwards up to the horizontal. As he turned, he started to level it, hip level, pointing as he turned round towards me. As he turned, I again shouted, "Armed police, drop it". By which time he turned round and was looking directly at me. As opposed to walking around he turned round and he was looking directly at me. The position he was in at that point I can only describe as a boxer's stance. As he turned, he levelled it. His left foot was forward, his right foot was back, so he was in the boxer stance. The weapon, which I think is a weapon bearing in mind the way he is pointing it, is horizontal and hip. His left-hand came up to the weapon to grip it, so he is gripping it with both hands. At that point I felt for sure I was looking down the barrel of a sawn-off shotgun. To strengthen the point even more if it needed it, he pulled it into his right hip as if to settle himself into a firing position. He had both hands on the weapon, he is in a boxer's stance to me, looking directly at me, with the weapon in both hands and it was pulled into his right hand hip to steady it. I could not quite believe what was going on, at this point, sir, bearing in mind I have actually used this firing position when I have fired sawn-off shot guns in training. The realisation struck me, that I was about to be shot at fifteen feet, with a sawn off shot gun. By this time, I had come into an instinctive firing position, and genuinely fearing for my own safety and I thinking I was about to be shot, I fired one pre-emptive shot in self defence."

18. Chief Inspector Sharman, while specific in his recollection, did not provide as detailed an account of precise movements. He put the matter in this way:

> "Whilst challenging, the male who was walking away from me turned, and he turned on his left leg and he turned through me, and I will describe him turning through me because he turned through me as if I was not there to face back along the pavement towards where Kevin Fagan was. As he was turning, the bag that was in his right hand was brought up across the body as he was turning and then the other hand, as he stopped facing Mr. Fagan, the other hand came up and grabbed the front of the bag and pulled it in. At that point, fearing for Kevin Fagan's life and believing that the contents of that bag were a sawn off shot gun, and with the actions of the person holding it, I felt that he was about to be shot. In response to that threat, I fired one round from my service pistol at the person."

19. The case put by Mr Owen was that this account had been fabricated after the officers had learnt that Mr Stanley was in possession only of a table leg and in order to justify their use of lethal force. I shall have to return to the reasons which form the basis for this assertion (which similarly are said to justify leaving to the jury the issue of unlawful killing) but first turn to the other evidence which, on behalf of Mr Sharman, Mr Lawson (who did not appear at either inquest) and Mr Michael Egan (who did) submit is entirely consistent with, and does nothing to undermine, these accounts.

20. Mrs Carpenter was the only witness who claimed to have seen Mr Stanley before the shooting. She said (as she had from the time of her first statement) that she saw him turn slowly towards the officers after their challenge and raise his arm. At both inquests she also said (not included in her statements) that she recollected seeing that he was carrying something in his hand, a plastic bag. It is undeniable that this description is consistent with, but not necessarily corroborative of, the officers' account but Mr Owen (who undertook a detailed analysis of Mrs Carpenter's evidence) contended that the jury were entitled to disregard it as unreliable. Thus, she was unwilling to accept that there was a line of parked cars in front of her vision; it seems clear that there were, indeed, two cars, parked on Fremont Road that would have been between her and Mr Stanley (although whether that would have prevented her from seeing what she described is another matter). Further, she had initially said nothing to the police about the blue bag. When pressed, she had added that she was "the first one to say that [she] may be mistaken about anything". Mr Owen argued that the jury, with the benefit of a site inspection, had the opportunity of seeing her demeanour and the responsibility of assessing her credibility; it was not for the coroner or for me to make assumptions about it.

21. Mr Lawson also pointed to Mr Carpenter as saying nothing inconsistent with the officers' account. He heard the officers' challenge and two separate shots; the only time he saw Mr Stanley was when he was on the floor. Mr Owen suggests that because he was standing close to his wife, doubt was cast on her evidence. Although I do not accept this last submission because it is commonplace that in sudden unexpected incidents, different people focus on different things (on which, for example, see the observations of Lord Bingham CJ in *R. v. Bentley* [2001] 1 Cr App R 307 at 316), and it is correct to say that Mr Carpenter does not give an account inconsistent with the officers, it cannot be said that his evidence really takes the matter any further.

22. Mr Cummings was driving past at the time of the incident. In his evidence, he said that he heard two shots and saw a man "more or less probably going down". He agreed that in his witness statement he had said that the deceased "seemed to be holding, gripping a bag or something similar, holding it with both hands, and almost clutching it" but was "not quite sure whether he had both hands on the actual thing he was holding or whether he was responding to being shot". He demonstrated what he meant by holding his fists together "around about waist height" saying that at the time, Mr Stanley was facing the officers. Mr Owen argues that this evidence does not give specific support for the officers' account; on the other hand, it cannot start to be said to be inconsistent with it.

Once again, however, evaluation of its reliability was for the jury.

23. I turn now to the two witnesses upon whom Mr Owen relies as fundamentally undermining what the officers said had happened. The pathologist, Dr Rouse, dealt with the post mortem examination and described the entry point of the fatal bullet wound (which was fired by Chief Inspector Sharman) as directly above Mr Stanley's left ear with the exit point at his right temple. Yet if the officers were correct, with the Chief Inspector to Constable Fagan's left and Mr Stanley turning anti-clockwise past the Chief Inspector and facing Constable Fagan, Mr Stanley would, on the face of it, have been presenting the right side of his head to Chief Inspector Sharman that is in almost exactly the opposite direction from that described as the path of the bullet.

24. By the time of the inquest, Chief Inspector Sharman was not as clear as to his position as he had been on the night (which itself was the subject of criticism from Mr Owen who suggested that he was seeking to tailor his account to the forensic evidence) but provided he was on Constable Fagan's left and Mr Stanley was facing Constable Fagan, it was argued that the entry wound could not be explained.

25. One answer postulated at the inquest was that there was no clear evidence as to the order in which these shots were fired and that if Constable Fagan fired first and caused the injury to the hand (to which I shall return) it was possible that Mr Stanley could have flinched as a response to the impact from that bullet and so turned around in such a way as to present the left side of his head at the moment that Chief Inspector Sharman fired. Indeed, Mr Lawson pointed to the following extract of the coroner's summing up as supporting this order of events:

> "There is some evidence that P.C. Fagan fired the first shot, from Dr Rouse. Dr Rouse would say that the fatal head shot would have caused the sudden collapse and therefore, by exclusion, the first non-fatal head shot was to the fingers."

26. Dr Rouse also gave evidence as to the injury caused by Constable Fagan's shot. This was to the left hand and more specifically to the palm side of the little finger, the ring finger and the back of the middle finger. Dr Rouse was not definitive as to the direction of travel of the shot but considered, on the balance of probability, that it was likely that the bullet passed through the little finger first and through the ring and middle fingers. Mr Brookes, although deferring to the pathologist, spoke of his experience attending post mortem examinations in firearms cases and expressed the opinion that from little to middle finger "was the direction of travel for that shot".

27. The significance of this opinion is that if it is right, Mr Stanley cannot have been holding the table leg as a sawn-off shot gun with his left hand gripping the weapon (as Constable Fagan, but not Chief Inspector Sharman, said) because his left little finger would have

been tucked behind the others. Further, there was no damage to the rest of Mr Stanley's hand, to any other part of his body, the bag or the table leg: rather the bullet struck the gate post behind Mr Stanley's position some 89 cm above the ground. As to this proposition, Mr Lawson relied on the fact that Mr Brookes had deferred to Dr Rouse who had made it clear that he could not rule out the other possibility. He put it in these terms:

> " Again, as I said in my report, the most likely route is little finger, coming out middle finger. That is the most likely route because of the problems associated with shored-up exit wounds, but I cannot say that it did not happen the other way in this particular case."

28. It was suggested to Mr Brookes that an alternative method of holding a sawn-off shot gun would be with the left hand on top for greater stability; he did not rule out the possibility (although believed it not to be the more natural way of holding a gun). This possibility was, however, different to Constable Fagan's description that "his left hand came up to the weapon to grip it".

29. In this context, it is appropriate to mention the evidence of two other firearms experts, Mr Bailey and Mr Burrows, each of whom is independent of the Metropolitan Police. Neither of them supported a case of unlawful killing (although the key matter they were asked to consider was gross negligence manslaughter) and both referred to the fact that the officers, without any communication between them, instinctively came to the decision that a shot needed to be fired. Further, Mr Bailey provided some insight into what he called perceptual distortion. He said that it had been found particularly difficult for individuals to identify the exact position they occupy during a moving target and attempting to do this can prompt the brain to fill any memory gaps, possibly drawing on information acquired from peripheral vision. The coroner repeated to the jury part of his evidence in these terms:

> "I have seen on many occasions that officers and witnesses pick up on a cue which is incomplete but in which their brain fills in the blank to complete the movement. It is a real phenomena. It is a recognised psychological phenomena and it means that they genuinely and honestly believe when they recount events and at the time the events they have filled in the blanks."

30. Mr Owen observed that whilst this might provide an alternative to the officers' account, it was not supported by any psychological data and was simply one of a number of explanations which it was perfectly open to the jury to accept or reject. The others were that the officers were correct or that they were simply lying. He submitted that it was not a definitive factor in removing any grounds to return a verdict of unlawful killing.

31. Mr Owen also relied on a number of other features (besides their demeanour when giving evidence) from which he contended the jury were entitled to conclude that the officers were lying. First, Chief Inspector Sharman had made two important transmissions, the first ("Stand by, Stand by, Vicky Park Road at junction with Freemont Street …") being 19 seconds before the second ("Stand by, Stand by, shots fired by police, man down …"). The Chief Inspector did not agree that both followed the shooting whereas Mr Owen claimed that by listening to the tape it was open to the jury to conclude (and, he said, obvious) from the tone of voice that the first was before the shooting and the second after it, thus demonstrating the time lapse between arrival and the shooting. At one stage, consideration was given to my listening to the tape but I did not do so because the decision was not mine to make: suffice to say that it was not suggested in argument that the jury could not have concluded that Chief Inspector Sharman was lying about this.

32. Secondly, reliance was also placed on the failure of the officers to mention that Mr Stanley had been about to shoot either over the radio or to the first officers who attended: Mr Lawson argued that no sinister significance could be drawn from this. Thirdly, that the two officers compiled their note books together some hours after the incident (before they knew of the expert findings) and that they were in the same room when Sergeant Meaney, who attended the scene after the incident and discovered that the contents of the plastic bag consisted only of a table leg, compiled his note book. Mr Owen also relies on inferences from the demeanour of Sergeant Meaney. Mr Lawson responds that as to the way in which the notebooks were compiled, whether desirable or not, it is certainly common practice and "permissible" (see *R. v. Skinner* (1994) 99 Cr App R 212 at 216), that there was nothing in the post shooting evidence to raise the slightest suspicion and that there was no basis for drawing any adverse inference based on the demeanour of the Sergeant.

The Available Verdicts

33. Based on the evidence and making the points which I have endeavoured to summarise, Mr Owen submitted that the coroner should be satisfied that there was some evidence upon which a reasonable jury properly directed could be sure to the relevant standard that the officers did not honestly and reasonably believe that it was necessary to shoot Mr Stanley to defend themselves or each other from attack. He argued that a reasonable jury could conclude that the officers' account was a carefully fabricated justification for the use of deadly force and that "to suggest that there is some other (unexpressed and unexplained) justification for the use of force is fanciful and calculated to distract the jury from the central thrust of the evidence they have heard". I pause to observe that it is important to be careful not to conflate two concepts. Although the force used must be reasonable, as I have made clear above, an honest belief of imminent danger such that it was necessary to use force does not have to be reasonable; the test is subjective not objective.

34. Mr Wood Q.C. for the Commissioner submitted that the only appropriate verdicts to leave to the jury were lawful killing and open. He also focussed on the officers' accounts, submitting that both believed that Mr Stanley posed a real and immediate threat and, as such, they responded in accordance with their training. He went on that there was no cogent evidence, ballistic, forensic or otherwise to negate their claim that they were acting in accordance with the law and in self defence.

35. Mr Egan, for the officers, contended that in order to return a verdict of unlawful killing, the jury would have to reject the combination of the accounts of the Carpenters and Mr Cummings and reject the officers' account because they were so satisfied that the totality of the ballistic and pathological evidence provided them with a clear, unequivocal and contrary picture. He went on that the combination of Mr Brookes and Dr Rouse would never provide the jury with any such basis.

36. 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:

> "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.
>
> 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."

37. I agree that the coroner's personal belief was irrelevant (and, in my view, should not have been articulated) but it is clear that he analysed the matter on the assumption that if there was evidence upon which the jury could reject the description which the officers gave of what happened, it followed that there was evidence from which the jury could safely conclude, beyond reasonable doubt, that the officers (and, in particular, Chief Inspector Sharman who fired the fatal bullet) did not honestly believe that there was an imminent threat of one of them being shot.

38. What is the evidence that supports that proposition? None of the eye witnesses even hint that the officers said or did anything to suggest that they were not under imminent threat and although the forensic evidence may serve to undermine the precise description which the officers gave of what happened, that evidence says nothing about the

configuration of Mr Stanley and the officers to allow the inference to be drawn that the officers could not, however mistakenly, have honestly believed that they were under imminent threat of attack: it would have been different if, for example, if Mr Stanley had been shot in the back. I have already identified what was said to be a possible explanation of the head injury; a hand is particularly mobile and could easily present in such a way as would result in the wound in fact inflicted, whether the passage was from little to middle finger or not.

39. In order to analyse this issue, a number of important background facts provide the context. First, the police were properly responding to information that a man was carrying a sawn-off shot gun; they were required by their duty to put themselves in what was, potentially, harm's way; they had not embarked on a frolic looking for trouble. Second, if the family's challenge to Chief Inspector Sharman is right, within 19 seconds of reporting his presence at the scene, Mr Stanley had been shot: on any showing, very little time elapsed for considered and measured decisions. Third, although Mr Stanley appears to have been walking away from the officers, he had certainly turned sufficiently to receive the shot to the side of his head: unless Mr Cummings is discounted entirely (as I accept he may be), which ever way Mr Stanley turned, he had turned round.

40. Fourth, 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, Mr Lawson observed that if they were in fear, that was very close to establishing 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.

41. These features all point to the difficulty of a jury ever safely being able to conclude beyond reasonable doubt that Chief Inspector Sharman's firearm was not discharged in the honest belief, however mistaken, that he or Constable Fagan was under imminent threat of being shot with a sawn-off shot gun. They certainly provide evidence that must be considered in the context of any rebuttal of self defence which, as I have indicated, is not necessarily undermined by the scientific evidence even though it can be used to undermine the accounts given by the officers.

42. Mr Owen argues that the only assertion of self defence which the officers have put forward is that contained in their accounts and that if the jury can properly conclude that these accounts have been fabricated after the event, the only possible conclusion is unlawful killing. Quite apart from a combination of the features to which I have referred

above, the difficulty with this argument is that it does not follow as a matter of logic. 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.

43. Mr Owen argued that it is entirely inappropriate to import into an inquest what, in reality, are the detailed legal requirements of the criminal law in relation to lies as prescribed by cases such as *R. v. Lucas* [1981] QB 720. Nobody is on trial and there is not the same need to protect an individual against an adverse finding because no verdict can be framed in such a way as to appear to determine any question of criminal liability on the part of a named person (Rule 42 of the Coroner's Rules as above). For the purposes of this case, it is not necessary for me to decide this issue for my criticism is not one of form or of failure to give specific directions but one of logic and is founded on the proposition that the evidence did not provide a basis to exclude beyond reasonable doubt what is realistic possibility.

44. I do not criticise the coroner for not considering this aspect of the case because, for reasons which I readily understand, none of those represented before him wished to argue the matter before him in that way. 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:

> "[I]t appeared to the Coroner (accepting the submissions of Mr Owen Q.C.) 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."

45. In the circumstances, I do not agree with the coroner that this was a borderline case. Having said that, although Mr Lawson argued that there was no evidence to undermine the officers' evidence and that the independent evidence supported their account, I am prepared to accept that there was sufficient material from Mr Brookes and Dr Rouse for the jury to be able to conclude that the very detailed account provided by the officers of Mr Stanley's precise movements was not accurate (and, perhaps, not honest) and that there may well have been other features which permitted the jury not to accept the account (such as tone and timing of the radio traffic), but that is different. I simply do not consider that, in the circumstances of this case that I have sought to outline, a jury

properly directed could safely conclude that the rejection of this account permitted, without more, a conclusion beyond reasonable doubt that they were not acting in self defence.

Summing Up and Verdict

46. Criticism is also made of parts of the summing up. In the light of the conclusion that I have reached as to the verdicts that should have been left for the jury to consider, it is unnecessary to deal with them but one complaint illuminates the failure to consider how far a rejection of the officers' account took the issue of a verdict of unlawful killing. Again, the summing up focussed 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. Thus, having dealt with unlawful killing, the coroner moved on to lawful killing and said:

> "In contrast, the burden for lawful killing is on the balance of probabilities: is it more likely than not? Again, there is a legal test for lawful self defence. Did the person who actually committed the act of what is purported to be self defence honestly believe or may he or she – he, in this case – honestly have believed it was necessary for self defence or for the defence of others? If you, the jury are sure that the person who committed the act did not have an honest belief that it was necessary for self defence, then the killing was unlawful.
>
> However, if the person was or may have been acting in that honest belief, then you go on to the second question. I have to say, in this case, that there is no evidence that PC Fagan and Inspector Sharman were acting in anything other than an honest belief. There is no evidence that they had a dishonest belief in this case.
>
> The second question is about the reasonableness of the force …"

47. Not surprisingly, this direction provoked considerable concern at the bar. Mr Egan made the entirely appropriate observation that if the coroner took the view that there was no evidence to controvert the officers' belief that they were actually going to be shot, the verdict of unlawful killing would have to be withdrawn. Mr Owen commented that they were "going over old ground". The coroner accepted that he had made an error of law and, in dealing with a number of corrections, later told the jury:

> "I also commented, in error, about there being no evidence of a dishonest belief. You should ignore that because the facts are a matter for you. You are entitled to reject any witness' evidence in part or in full. It was put to the officers, but denied, but you are

> entitled to find that you do not accept the officers' account and that it was a fabrication, and you are entitled to conclude or make – findings about dishonest belief are a matter for you. [sic]"

48. With great respect, that correction does not assist as much as it might. First, whether there is any evidence of "no honest belief" is a matter of law for the coroner. If he had taken that view (and his ruling had been expressed on the basis that it was open to the jury to reject the officers' account of events), he should indeed have withdrawn the verdict of unlawful killing. Furthermore, if he 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. Finally, the correction is confusing: to speak about dishonest belief does not help the jury address the fundamental issue in the case.

49. In the Additional Grounds for seeking judicial review, based on the observations of Collins J in *ex parte Anderson (supra)*, it is argued that "in the circumstances, the jury should have known clearly what they had to find as facts in order to justify a verdict which decided that a criminal offence had caused the death" and that "the coroner failed, with sufficient clarity, to direct the jury as to what facts they would have to find in order to return a verdict of unlawful killing". I do not read this challenge as limited to the ingredients of unlawful killing which were placed before the jury but rather to the findings of fact that form the steps in the reasoning which must be followed before it is possible to reach the most serious verdict open to a coroner's jury.

50. 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.

51. For the sake of completeness, I should record the jury's response as recorded in the Inquisition. The jury were given a document headed "Notes for completion of the Inquisition" and was described as an algorithm consisting of a series of questions "to assist you to complete findings on the circumstances of the deceased's death". The last three questions are as follows:

> "15. What did Mr Stanley do and how did he move when challenged by the officers?

> 16. What were the positions of the officers relative to each other and Mr Stanley when the shots were fired?
>
> 17. What threat or risk to their own health and safety did the officers believe or perceive themselves to be exposed (sic)?"

52. During the course of his summing up, the coroner observed:

> "There are certain questions which must be answered in term of Mr Stanley's full name and registration particulars … There are other questions for which there may not be an answer because there is not evidence for it or it is a question which you have to ask yourself and simply not find an answer to. It is a question of considering whether there is an answer to it and putting it in the inquisition. Also, the final question, question 17, is a question for you to consider now, but it also goes more to the verdicts which I will come to later."

53. The jury concluded that Mr Stanley was unlawfully killed. Under the printed heading "Time, place and circumstances at or in which injury was sustained" the jury provided a narrative (which subsequently had to be corrected because, contrary to the coroner's directions, it named the officers). It is as follows:

> "At between 7.52 and 7.55 pm on Wednesday, 22nd September 1999, Mr Henry Bruce Stanley was killed by a single bullet wound to the head. The shot was fired by Inspector Neil Sharman. Mr Stanley was positioned on the right-hand pavement of Fremont Street, near the junction of Victoria Park Road. Mr Stanley was also shot in the left hand by Constable Kevin Fagan. The two shots were fired following a verbal challenge by both officers, who were responding to a 999 call made by Mr Willing from the Alexandra Public Arms [sic] at approximately 7.44 pm. Mr Willing reported a man fitting Mr Stanley's description who had left the pub carrying what was apparently a sawn-off shotgun wrapped in a blue plastic bag. Mr Stanley had begun to turn towards the officers in response to the challenge when the shots were fired."

Although I appreciate that the coroner made it clear that the questions did not have to be answered in the Inquisition, and specifically commented that Question 17 went "more to the verdicts", the jury did not, in fact, deal with the last two questions in their narrative of circumstances and no challenge is mounted to this aspect of the Inquisition.

Conclusion

54. For the reasons that I have given, I quash the verdict of unlawful killing but leave in place that part of the Inquisition which deals with the time, place and circumstances in which Mr Stanley sustained his fatal injuries. In the light of the representations made by all those who appeared in the case (including Mr Owen), none of whom submitted that I should direct that another inquest should take place (with which view I agree), I do not do so.

55. However, I repeat what I said at the beginning of this judgment. Mr Stanley's death was a terrible tragedy not in any way altered by the issues that I have had to consider. Mr Clarke, for the Independent Police Complaints Commission, spoke, without providing detail, of recommendations that go to issues of procedure and that came out of the investigation. There are certainly lessons to be learnt. Speaking for myself, and conscious that I am trespassing on matters that those far more qualified than I must have considered, I am concerned that by challenging Mr Stanley from behind, without having taken cover, the officers ran the risk that he would turn round to see what was going on and react in a way that could create a real risk of a misunderstanding as to his intentions. That risk is particularly acute if, as was the event, Mr Stanley was unarmed and might even have been unaware that the challenge was addressed to him. Whether or not a misunderstanding on the part of the officers may be justifiable, they did in fact misunderstand Mr Stanley's reaction and, as a result, he lost his life. This is not a situation that can be allowed to be repeated.

Postscript

56. 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:

> "[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.
>
> 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."

57. 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.

58. 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.