Justice delayed is justice denied: an ‘unreasonable’ open verdict requires a fresh inquest 32 years later

written by Bridget Dolan QC | 27 December 2021

***Earl v Senior Coroner for East Sussex* [2021] EWHC 3468 (Admin)**

When 22 year-old Jessie Earl disappeared in 1980 it was inexplicable to her parents that this very happy, family loving art student would just walk away from her home, her studies and her life. The suggestion by a police officer that Jessie had somehow obtained another passport (hers was still at home) and left the country was, to say the least, fanciful.

Nine years later, when Jessie’s skeletal remains were found hidden in virtually inaccessible scrubland, it shouldn’t have taken Sherlock Holmes to work out that foul play was the highly likely explanation for Jessie’s disappearance. The cause of Jessie’s death was, by now, unascertainable, although there was some brown staining over the right temporo-parietal bone, which might have been blood staining. None of Jessie’s clothes or personal items were found, save for Jessie’s bra which had been tightly knotted and fashioned such that, in the opinion of the pathologist, ‘*both wrists of the individual may have been tied together by this brassiere*‘.

An expert in the craft of knots also reviewed the knotted bra and informed the police that it was similar to impromptu handcuff contrivances commonly found on victims at scenes of crime. The knot was very tight and at some point had been subjected to considerable force. The tightening of the knot was not down to prolonged exposure. It was more likely the result of the knot being tied tightly, or subjected to struggling, or loaded with a weight (e.g. suspension or dragging).

Despite all this evidence, the elementary deduction that this was a homicide somehow escaped both the police officer in charge of the investigation and the East Sussex Coroner.

Around one month after it began, the perfunctory police investigation into Jessie’s discovery was closed. Bizarrely, the senior investigating police officer (SIO) instructed his inquiry team that the discovery of the skeleton was not be crimed as possible murder nor should anyone refer to it as a murder. The investigating officers were stood down despite numerous lines of inquiry not yet having been followed. No crime was recorded as having been committed.

The flaws in this rapid and rudimentary investigation would of course have been exposed by a full, frank and fearless coronial investigation. Sadly however, a cursory inquest four months after Jessie’s discovery simply compounded the injustice.

The inquest

At Jessie’s inquest the then coroner for East Sussex declined to call the pathologist, merely reading his report. He admitted nothing of the knot expert’s opinion, nor does it seem that he considered the evidence of Jessie’s GP, who stated that she had no medical conditions or ailments that could have caused or contributed to her death, nor any mental health problems. Rather, the Coroner admitted the evidence of a senior member of the police’s 1989 investigation team whose written statement made no mention of the knotted bra or absence of other clothing with the body. A more junior police

officer did give oral evidence stating that she was in '*no doubt that Jessie met her death unlawfully*'. It was her firm view that Jessie had been murdered, but that view was in direct conflict with that of her SIO and does not appear to have carried much weight with the Coroner either.

Jessie's parents made written submissions to the Coroner, arguing that an open verdict would be unsatisfactory and that an unlawful killing finding was appropriate given that a natural cause and suicide could be ruled out. Even though the precise medical cause of death was unascertainable, all the available evidence appeared to have pointed to Jessie having been unlawfully killed. The Coroner nevertheless recorded an 'open' verdict, giving no further explanation as to why he rejected the parents' submissions.

'Cold case' review

Eleven years later, in 2000, Sussex Police opened a 'cold case' investigation into Jessie's death. That review concluded that there was 'no doubt that Jessie had been murdered'. The investigation concluded there had been serious errors in the first police investigation and revealed a serious insufficiency of inquiry by both the police and, by implication, the Coroner.

> ***"There was no doubt Jessie had been murdered"***

Commendably, the conclusions of that 2000 police review were presented by the Sussex Police to the current Senior Coroner. The view of the force was (and remains) that Jessie's death should be regarded as a case of murder and the case remains open. One might have hoped that at that stage that Jessie's parents' quest for justice would have become easier. However, despite the police having no doubt that Jessie had been murdered, a large volume of fresh evidence (including a forensic profiler's report and that pollen in her nasal passages suggested Jesse had died where she was found) and the police having 'invited' the current Coroner to make an application for a fresh inquest himself, the Coroner declined to do so. Jessie's parents (who by that time were already pensioners) were left to pursue any future application alone.[1]

The Divisional Court's decision

There was no new issue of law in this case: section 13(1)(b) of the Coroners Act 1988 provides a non-exhaustive list of circumstances which might cause a court to conclude a new inquest is necessary, but the ultimate issue for resolution by the Court is always whether *'it is necessary or desirable in the interests of justice'* that another inquest should be held.

> ***"A clear and overwhelming case"***

A three judge Divisional Court, including the Chief Coroner, found there to be a clear and overwhelming case here. The detailed judgment, running to 99 paragraphs, lays bare the earlier failings of the police and the first Coroner. The Court considered that not only was there an insufficiency of inquiry but that the open verdict of the first Coroner **was not reasonable under public law principles** even if applying the criminal standard of proof at the relevant time. The virtually inaccessible location of Jessie's body and the knotted bra found with it clearly pointed to an unlawful killing.

There was, said the court, a '*compelling case for a finding of unlawful killing*'. Just as importantly,

Mr and Mrs Earl had themselves ***'been victims of a substantial injustice'.***

Comment

In the words of the Lord Chief Justice, when allowing the Hillsborough victims' families' application for a fresh inquest, it is:

> *'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'*[2]

One matter this judgment does not address is upon whom the burden of upholding the interests of justice should fall when there is overwhelming evidence that the substantial truth about a death was not revealed at what was a fundamentally flawed first inquest.

The Divisional Court commended Mr and Mrs Earl *'for the determination with which they have pursued justice over many years.'* But should Jessie's elderly parents have been left to continue to press for justice alone? Now both in their 90's, Mr and Mrs Earl had to resort to crowdfunding to support their application to the Attorney General and the High Court.[3] The Attorney General's *fiat* to bring the application was obtained in November 2020, even then the Defendant Coroner did not positively support the parents' application, instead saying he was *'content to let the Court decide the matter'.*

There is no bar to a coroner seeking to overturn their own or their predecessor's inquest. Where it is the police who approach a coroner with evidence of a missed homicide, and where the police also invite the coroner to make the application, there will be powerful arguments for the coroner to do so (as, for example, happened in respect of the death of Helen Bailey)[4]. Where justice has so clearly not been done because of shortcomings in the coronial process then it is arguable that justice might require the Coroner to make the application promptly themselves.

The application process can be bewildering to lay people, for whom the cost of obtaining legal advice may also be prohibitive. But for a Coroner, who is supported by their local authority legal team, it is a relatively simple and inexpensive process. First, a letter to the Attorney General setting out the reasons why a fresh hearing is required and citing the position of the interested persons [5]. Second, once a *fiat* is obtained,[6] a brief part 8 application (on court form N208), is issued accompanied by a statement and grounds (a re-word-processed version of the initial letter to the AG may even suffice).[7]

In Jessie's case the Court directed that, 'given the current coroner had already had an involvement in this matter, a different coroner must conduct the new investigation'. The Court cannot direct how that new coroner goes about their task, but the Court indicated that the fresh coronial investigation should be commenced as a matter of urgency. Once can only hope for Jessie's parents that their delayed justice will now come soon.

Footnotes

[1] see BBC report here

[2] *Attorney General v HM Coroner of South Yorkshire (West)* [2012] EWHC 3783 (Admin).

[3] see here

[4] and see also our blog re the Helen Bailey case here

[5] whilst a formal legal 'memorial' can be drafted (see *Jervis* at A4-01 for an example), the recent guidance note from the Attorney General's office makes it clear that the application need not take any particular form. However the document should record the applicant's details, the deceased's details and the grounds of the application set out in numbered paragraphs and should be accompanied by all the documents intended to support the application. This will normally include a record of inquest, relevant parts of the hearing transcript from the previous inquest and any other relevant material including any fresh evidence. See the UK Inquest Law Blog's 'Top tips for making a application' here.

[6] a refusal of a Coroner's own application for a *fiat* is rare.

[7] in this bloggers' knowledge a coroner's application made in January 2021 to overturn their own inquest took only three months to be granted by the High Court. In a clear cut case the matter can be dealt with quite speedily and the costs of instructing counsel may not need to be incurred.

George Thomas of Serjeants' Inn Chambers represented the Chief Constable of Sussex in this application