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IN THE CORONERS COURT FOR NORTHERN IRELAND

**IN THE MATTER OF AN INQUEST INTO DEATH OF
MARIAN BROWN**

Ruling in relation to an application by the next of kin for the remains of the body of Marian Brown to be exhumed for examination.

Before: His Honour Judge McFarland, Recorder of Belfast

1. I am currently in the process of conducting an inquest into the circumstances surrounding the death of Marian Brown in June 1972. Towards the end of the oral evidence which I heard in June 2017, I received an application on behalf of the next of kin that I order the exhumation of the body of Marian Brown. On receipt of the application I sought the opinions of the five pathologists who had already given evidence in the case and from a ballistics expert on this issue of exhumation. I have received those opinions and a further supplementary submission on behalf of the next of kin. The Crown Solicitors Office, which represents the interests of the Ministry of Defence and the Police Service of Northern Ireland, have made no submissions and are neutral on the issue.
2. In coming to my decision I have made certain preliminary findings of fact which I have based on the evidence available to me at this stage. These findings were necessary to enable me to approach this application in the proper context, but they are only preliminary rulings and may be subject to further submissions by the parties, and potential revision.
3. Marian Brown died in the early hours of 10th June 1972. She had been standing on Roden Street on the western side (the Royal Victoria Hospital side) at its mouth with the Grosvenor Road in Belfast. There is a substantial degree of agreement between the pathologists that the cause of her death was a bullet which passed through her neck and

severed the spinal cord, leading to instantaneous collapse, loss of consciousness and rapid death. There is also a substantial degree of agreement that she was struck by other bullets. There is, however, some uncertainty as to the direction of travel of the fatal bullet and to the calibre of that bullet and the other bullets. If any or all of these matters can be ascertained, then this may assist in the overall determination of such matters as the actual weapons that fired the bullets, if not the actual weapons, then the type or make of the weapons used, the location of the individual or individuals who fired the shots, and in the context of the hearing, even if the actual identity of a person cannot be ascertained, whether he, she or they can be identified as a civilian or as a soldier. In considering these matters I remind myself that the function of this inquest is not to determine civil or criminal liability and I also remind myself of the requirements for an Article 2 European Convention (right to life) compliant inquest, although those are matters for a later stage in these proceedings.

4. The application on behalf of the next of kin has focussed on three main themes
 - (a) recovery of bullets or fragments which may provide assistance in determining the type and calibre of the bullets;
 - (b) recovery of bullets or fragments which may provide assistance in determining the type of weapon which fired the bullets; and
 - (c) recovery of bullets or fragments which may provide assistance in determining the direction of travel.
5. The inadequacies of the Coroners Act (Northern Ireland) 1959 are well documented, but there is sufficient power within the Act, as augmented by a Coroner reading down sufficient provisions to make the 1959 Act compatible with the provisions of the Human Rights Act 1998, for me to order the exhumation of the remains, to then take possession of the remains and order an examination.
6. As for the actual test to be applied to the consideration of a request, section 15 of the 1959 Act gives some assistance. It states –

“Where the body of any person upon whom it is necessary to hold an inquest had been buried and it is known to the coroner that no good purpose will be effected by exhuming the same for the purposes of an inquest he may proceed to hold the inquest without having exhumed the body.”

7. I am satisfied that the section creates a ‘good purpose’ test with a presumption that in the absence of a good purpose the exhumation of the body should not be ordered. What is, or is not, a good purpose will clearly depend on all the circumstances of the case, what evidence is already available to the Coroner, and what evidence is likely to be recovered from the exhumation and any examination of the remains. The ‘good purpose’ test is informed by the relevance of that potential

evidence and what assistance it could render when placed beside all the other evidence in the case.

8. I remind myself that the balance of probabilities applies. Therefore, if on balance I think that there is a 'good purpose' to be served by exhumation in the circumstances of this particular inquest and the issues I have to determine, then I may order exhumation.
9. As for other relevant factors to be taken into account in applying the test, at paragraph 5.14 of Lecky's *Coroners Law and Practice in Northern Ireland* the author stresses the need for caution in exercising such the power to order exhumation "*since the exhumation is a traumatic and distressing experience for the family, apart from being expensive and time consuming.*" And further that the power should be exercised with caution and "*only where there is cogent evidence that a post mortem examination will assist.*"
10. I do not believe that the comments in the text create any new test, but merely set out factors that have to be taken into account in the overall balancing exercise that a Coroner is required to carry out.
11. First of all I take into account the views of the family and the Article 8 European Convention considerations (the right to respect for private and family life). I have considered the distress that an order to exhume Marian Brown's remains will cause. I have been assured in both oral and written representations from the family's counsel that they support the application to exhume, notwithstanding the distress it will cause them.
12. I now turn to consider the evidential issues.
13. When there has already been an examination of the body prior to burial, the sufficiency of that examination will be an obvious factor.
14. An autopsy was carried out on the body of Marian Brown at the Mortuary on Laganbank Road in Belfast by Professor Thomas Marshall on the 11th June 1972. He observed and recorded 10 bullet wounds to the body. In his report he itemised them numerically and I will use the same numbers.
15. Wound 1 was to the right hand side of the neck and Wound 2 was to the left hand side of the neck. A probe was inserted and this confirmed the passage of the bullet horizontally linking both wounds, one being an entry wound and the other an exit wound. Professor Marshall having had the benefit of the examination of the body was of the opinion that Wound 1 was the entry wound and Wound 2 was the exit wound, but his professional colleagues disagreed preferring the opposite scenario with the bullet passing from left to right. I am satisfied that Wound 2 is the entry wound and Wound 1 is the exit wound.
16. The bullet exiting the neck then created a gaping wound 11cm in length to the right upper arm. This was Wound 3.
17. Wounds 4 and 5 are linked wounds marking the passage of a bullet downwards through the right upper arm exiting on the outer side of

the arm. Whilst there was some speculation that this bullet may have in fact been a fragment of the bullet which entered at Wound 2 part of which after fragmentation caused Wound 3 and another part of which caused Wounds 4 and 5, I am satisfied that this was a separate bullet. I consider it unlikely that a bullet entered Wound 2 and then fragmented with the two fragments both emerging through Wound 1 and then deviating from each other to cause Wounds 3 and 4/5.

18. Wounds 6, 7 and 8 were caused when a bullet entered the outer side of the left elbow at Wound 6, fragmented and two parts exited the front of the left forearm at Wounds 7 and 8. There was some speculation that these wounds had been caused by two separate bullets with a common entry wound and different exit wounds, but there was little expert opinion to support this possibility and I reject it.
19. Finally Wounds 9 and 10 were linked wounds to the inner side of the right knee (Wound 9) and to the front of the leg below the right knee (Wound 10).
20. There was some discussion about the possibility that Wounds 6 and 7/8 and Wounds 9 and 10 were caused by the same bullet. This theory has a certain superficial attraction given the lines of passage of these wounds - both in a diagonal downwards direction from left to right (as shown in a diagram prepared by Dr Clark appended to his report of 8th November 2014), but there was no real support for this from within the professional opinions expressed during evidence. I reject this suggestion.
21. The findings expressed in paragraphs [15] - [20] are preliminary. In due course I will give detailed reasons. I therefore conclude that Marian Brown was struck by four bullets, the fatal one to the neck, and three others to the upper right arm, the left elbow and the right knee.
22. Having come to these findings on the evidence available to me, I am satisfied that the third theme raised by the next of kin - assistance in determining the direction of travel of the bullets - has already been answered. It seems unlikely that any findings post exhumation would serve to corroborate or contradict these findings.
23. It is also important to note the evidence of Thomas Corrigan, who was with Marian Brown that evening. He described their parting moment and the embrace at the entrance to Roden Street. They were standing on the pavement, she with her back to the Donegall Road end of Roden Street (the location of the army patrol). The evidence from the soldiers would suggest armed civilians, either on foot at or about the same location as Thomas Corrigan and Marian Brown, at the opposite corner on the eastern side of Roden Street, and in a motor vehicle moving on the Grosvenor Road across the mouth of Roden Street in a westerly direction. Thomas Corrigan described how both he and Marian Brown moved after they heard shooting (either from the weapon discharges or from ricocheting bullets).

24. I am minded to accept Thomas Corrigan's evidence on Marian Brown's movement after the shots were fired. Propelled by Thomas Corrigan, Marian Brown spun in a clockwise direction through 180 degrees before moving, possibly in a diagonal direction, towards the shelter of the buildings on the western (Royal Victoria Hospital) side of Roden Street. Such rotation and movement is bound to have been rapid and would have exposed both her right and left hand side to a number of different points from which bullets could have been fired leading to direct or ricochet contact.
25. I must also consider the qualities of limbs generally and the actual parts of Marian Brown's body that were struck. A fit mature person's arms and legs can change position substantially in a short period of time. (At the time of her death Marian Brown was 17 years 8 months and was described in the Autopsy Report as being healthy.) Combined with that, when Marian Brown was spun around she then moved quickly toward the wall, presumably in a running type motion (albeit over a short distance) with one arm still in contact with Thomas Corrigan who was leading her. She is also likely to have adopted a crouching protective position during this period. Those movements would have caused substantial change in the positioning of her limbs. Her neck would also have a degree of mobility, even when running, although the presence of the gouging wound (Wound 3) on the right upper arm would suggest that the neck and upper arm were aligned with the face perpendicular to the shoulders and right arm.
26. Had she been static when struck, it would be much easier to make an assessment of where the bullet had travelled from by comparison to the part of the body it struck and its movement thereafter. However, that is not this case.
27. I therefore consider that determination of the direction of the travel of any of the bullets in respect of where they initially struck Marian Brown and thereafter where they moved through her body is of very limited value in attempting to determine the location, or locations of the source of the bullets.
28. I do, however, consider that the potential for recovery of a bullet fragment, or fragments, from the remains of the body could be of some assistance to me in determining relevant matters, and I have therefore focussed on this issue.
29. In terms of the 'good purpose' test I consider that in this instance it must be balanced with a consideration of how likely exhumation is to lead to the recovery of a bullet or fragment of evidential relevance. Whilst there is no express reference in section 15 of the 1959 Act to such a balance, I consider that the global interests of justice considerations applicable to all court proceedings must factor in some consideration of the likelihood of recovering an item of evidential value. Putting it another way, recovery of a bullet or fragment post exhumation could be of evidential value for the inquest, but if

- recovery is unlikely then I do not believe it would be in the interests of justice to embark on the distressing and costly exercise of exhumation.
30. I have considered the evidence of the experts about the likelihood of a bullet or fragments being located following exhumation.
 31. The body was already examined post mortem by Professor Marshall, who given his role at the time, and since, has had considerable experience in the examination of gunshot wounds. He did not have the body X-rayed or have it scanned. These were not common tests at the time and the mortuary lacked the type of equipment to carry them out. It is acknowledged that a post mortem carried out today in similar circumstances would have included X-rays and scans, the purpose of which would be to determine the presence of foreign objects, including bullets or fragments, as well as to give some guidance as to the passage of the bullet and any damage caused to bone or soft tissue.
 32. Professor Marshall did dissect the neck, presumably because it was the area of fatal injury. He did not recover any bullets or fragments. The experts agreed that it is a particularly difficult area to dissect and examine for, and recovery of, foreign objects. Professor Marshall did not appear to carry out any other dissection. He did insert probes, presumably to identify the direction of the bullet to identify exit wounds, but this is unlikely to have identified bullets or fragments unless the probe actually struck such an object.
 33. Whether or not a bullet will fragment will depend on a number of factors including whether it is a direct contact or ricochet, its general stability as it enters and travels through the body, and what it comes into contact with in the body. Whether or not a bullet fragment remains in the body will also depend on a number of factors including the retained energy of that particular fragment and the nature of the bone and tissue in its path.
 34. Given the findings in respect of both entry and corresponding exit wounds the evidence suggests that at least part of each bullet exited the body. There is evidence that the bullet causing Wounds 6, 7 and 8 to the left arm did fragment given the presence of two exit wounds.
 35. Mr Rossi, the ballistics expert, was of the view that it was unlikely that any bullet fragment remained in the body. However, he was of the view that should a fragment be recovered it would be capable of microscopic examination which may determine the bullet type. He did say that it was impossible to indicate what would be regarded as a minimum size, only that "the larger the fragment the better".
 36. The medical experts had differing opinions. Professor Marshall was of the view that there was a possibility that a bullet fragment could be recovered. (In their submission counsel for the next of kin stated that this could be expressed as a "clear" possibility, although I could find no support for this description.)

37. Dr Clark stated that there was "every possibility" that fragments could be located in various parts of the body including the neck, left arm and right knee. The determining factor in his view was the proximity of a bone to the bullet's path. He did however concede that the fragments were likely to be very small. He concluded his remarks by indicating that "in general, my own feeling is that exhumation .. would not conclusively answer the main questions surrounding [the] death, specifically ... the nature of the bullets .. and would add little to the opinions already expressed in reports and at the inquest."
38. Professor Crane is of the view that it would be unlikely that there will be a bullet fragment in the neck as the appearance of the entry and exit wounds suggests an intact bullet particularly with the absence of a hard bony surface. The relatively thin and delicate bones of the cervical spine would be unlikely to result in significant damage or fragmentation to the bullet. He does however suggest because of the likelihood of the left arm bullet striking either the humerus or the radius and ulna (above or below the elbow) that fragmentation has occurred and it is possible that a fragment has remained in the arm. In his concluding remarks he states - "it is my considered opinion that exhumation of the body in this case is not likely to result in the retrieval of any forensically significant evidence."
39. Dr Delaney is much more guarded than his colleagues. He states that it is certainly possible that fragments may not have been located by a careful dissection. His final observations reflect his uncertainty - "It is impossible to be certain as to the potential usefulness of exhumation without knowing what the finding will be. It is possible that it will not result in any additional positive findings but that in itself will remove doubt about positive findings existing. It is also possible that there may be additional evidence retrieved that may go some way to providing answers to the questions posed."
40. Finally, Dr Cary's opinion is that in the absence of an X-ray examination it is unknown whether fragments remain in the neck, however he considered that there was a reasonable chance that some fragments would be present. He also refers to the possibility of other fragments remaining at the sites of the other wounds.
41. In considering the weight of these opinions I have taken into account the experience of both Professor Crane and Dr Clark, who would appear to have significant experience in examining human remains recovered after exhumation in the former Yugoslavia. In addition, Dr Clark is presently based on the Falkland Islands dealing with the exhumation of the remains of Argentinian soldiers. Dr Cary has referred to his involvement in the Deepcut Inquiry, which resulted in an order to exhume the remains of a female soldier, which yielded the recovery of bullet fragments. (My understanding of that inquest is that the bullet wound was in the vicinity of the nose and eye socket and therefore in proximity of the skull.)

42. In the event of a fragment remaining in the body, in general terms the experts are in agreement that if there was any fragment in a bone, it is likely to remain in situ in the bone, and therefore it will be in the same place now that it was at the time the injury occurred when it came to rest. If there was a fragment lodged in tissue, it will not necessarily remain in the same place as it was at the time of the injury because of decomposition and other factors. However, if it can, by virtue of its location in comparison to the position of Marian Brown's remains, be linked to a particular area of the body, this will provide some evidence about its association with the wounds described earlier.
43. Is there a good purpose to be derived from the exhumation of the body? My analysis of the evidence is that it would be unlikely that an intact bullet was retained within the body of Marian Brown. The presence of the corresponding entry and exit wounds and the nature of Professor Marshall's examination would support this conclusion. The consideration therefore revolves around the likelihood of recovering a fragment of a bullet, and if recovered, its likely size and nature. (Although Mr Rossi referred to size, I accept that size alone is not the determining factor, as the nature of the fragment may yield better results from any examination. I do however accept that the larger the fragment the more likely that it will yield a better result forensically.)
44. I consider that the weight of the expert evidence suggests that, on the balance of probabilities, it is unlikely that there will be a bullet fragment contained in the body. I accept the evidence of Professor Crane that the impact of the fatal bullet on the relatively softer cervical spine is unlikely to cause fragmentation, and when considered against the nature of the entry and particularly the exit wounds and the negative findings from Professor Marshall's dissection, it is unlikely that the bullet fragmented. I accept that the bullet causing Wounds 6, 7 and 8 to the left arm, appears to have fragmented. I accept that the presence of fragments would be of relevance notwithstanding that it was not a fatal wound. However, I am of the view based on the evidence available to me and the opinions of the experts that it is no more than a possibility that a fragment of that bullet was contained in the body. Similarly I also take the view that the presence of a fragment broken off from either of the bullets causing Wounds 4 and 5 (upper right arm) and Wounds 9 and 10 (lower right leg) is merely a possibility. In coming to this view I am rejecting Dr Carey's assertion that there is a reasonable chance that fragments remain in the body. I accept that there is a chance, in the sense of a possibility, but I can put it no higher than that and struggle to establish the reasonableness of that chance. His example of the Deepcut case reflects a decision made in the circumstances of that particular case.
45. The "good cause" is linked to a presumption that the exhumation may be ordered unless there is a good cause that it should not. The

purpose of an inquest is to carry out a thorough examination of all relevant evidence, and as part of its inquisitorial function, to come to conclusions and findings on the balance of probabilities. It is not to follow up and exhaust all possible lines of enquiry, but only those that have a reasonable chance of yielding relevant evidence.

46. In the circumstances I consider that the exhumation is only following a speculative line of enquiry and would not satisfy a good purpose. I accept the opinion of Professor Crane that it is not likely to result in the retrieval of any forensically significant evidence and therefore I refuse to order one.