

Judicial Communications Office

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COURT DISMISSES APPEAL AGAINST REFUSAL OF LEAVE TO APPLY FOR JUDICIAL REVIEW OF INQUEST FINDINGS INTO DEATH OF TONY DORIS

Summary of Judgment

The Court of Appeal¹ today dismissed an appeal against the refusal of leave to apply for judicial review of certain findings made by a coroner following an inquest into the death of Anthony (Tony) Doris who was shot dead on 3 June 1991 in Coagh, County Tyrone, by a member of a specialist military unit (“Soldier B”) during an attempted Provisional IRA active service unit (“ASU”) operation to murder an off-duty UDR soldier.

Background

The findings of the inquest concluded that the use of lethal force by the army was justified, while making certain criticisms regarding planning, control and operation². Following the inquest findings, the daughter of Tony Doris (“the appellant”) brought judicial review proceedings challenging the coroner’s findings in relation to Soldier B (but not the actions of the other members of the army cover group (Soldiers A, C and D)). She sought orders of certiorari quashing specific paragraphs of the coroner’s findings insofar as they relate to the deceased and Soldier B, together with orders of mandamus and declaratory relief, including declarations that the force used was unlawful, breached the Yellow Card, and failed to comply with article 2 ECHR obligations.

The judge refused leave, concluding that the appellant had not established an arguable case with a realistic prospect of success³. He rejected each ground of challenge advanced by the appellant and also stated that if he was required to determine the matter substantively, he would have unreservedly upheld the coroner’s findings and rejected the challenge in its entirety.

The appeal

The appellant appealed against this decision raising five core points:

- (1) The judge erred in holding that there was no arguable ground that the coroner failed to apply the heightened article 2 obligations applicable to trained firearms officers, as per *Bennett*⁴.
- (2) The judge erred in concluding that it was unarguable that the coroner failed to adequately engage with, or provide adequate reasons for, his findings concerning Soldier B’s justification for firing.

¹ The panel was Keegan LCJ, Colton LJ and Fowler J. Keegan LCJ delivered the judgment of the court.

² *In the matter of an Inquest into the deaths of Lawrence Joseph McNally, Anthony Patrick Doris and Michael James Ryan* [2024] NICoroner 22

³ *In re Roisin Nugent* [2025] NIKB 54

⁴ *Bennett v UK* Application 5527/08.

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- (3) The judge wrongly held that there was no arguable case that the coroner erred in finding that the shooting of the unarmed driver (Tony Doris) was absolutely necessary.
- (4) The judge erred in concluding that the coroner's finding of compliance with the Yellow Card was unarguable.
- (5) The judge erred in finding unarguable the contention that the coroner improperly treated the four soldiers' actions collectively, without assessing Soldier B's individual justification for firing.

In dealing with this appeal, the Court of Appeal stressed that in a case where a substantive breach of article 2 is alleged, the outcome is fact sensitive and made the following observations. Caselaw makes it clear that article 2 requires the assessment to be undertaken from the perspective of a soldier confronted with an imminent threat, and not with hindsight. The Court of Appeal was not engaged in a direct merits appeal against the coroner's inquest findings. The approach to be followed by judicial review and appellate courts in Northern Ireland when an article 2 issue arises is to undertake "particularly thorough scrutiny." The court was satisfied that the court had conducted thorough scrutiny and applied the proper standard. However, given that article 2 is engaged, and a substantive breach is alleged it must thoroughly scrutinise the coroner's reasoning to determine whether any ground of challenge could rationally have been considered arguable.

Ground 1: the article 2 obligations applicable to trained firearms officers

The appellant contended that the case of *Bennett* decided by the Strasbourg court imposes an enhanced level of objective scrutiny on the actions of trained firearms officers and soldiers, such that neither the coroner nor the judge applied the correct standard. *Bennett* emphasises the need for rigorous examination, rather than espousing a separate legal test. Properly analysed, *Bennett* expressly reaffirmed the core principles including that the assessment of whether lethal force was "absolutely necessary" or proportionate must take into account the circumstances as the officer honestly and reasonably believed them to be, as well as the rapidity with which decisions must often be taken in life-threatening situations, while recognising the danger of applying hindsight.

Turning to the evidence, Soldier B confirmed that he had extensive experience in the use of firearms and was accomplished in their use. He also confirmed that the level of training he had undergone as a member of a specialist military unit was of a higher standard than the training provided to soldiers in other regiments serving in Northern Ireland at the time. Crucially, as the judge highlighted, Soldier B's firing took place within a one-to-two-second interval using a military rifle capable of rapid successive discharge, and that a freeze-frame or per-round disaggregation of his response was artificial and divorced from the operational reality.

The court said that, in that respect, the judge's analysis aligns with *Bennett's* emphasis on assessing absolute necessity and proportionality from the perspective of the officer acting in the moment, and it provides a proper legal and practical basis for rejecting the appellant's contention that each individual shot required discrete justification.

The judge expressly referenced the higher standard expected of trained personnel, reciting the evidence of Soldier B's training and the coroner's treatment of it. He then conducted an independent proportionality assessment informed by that training. The court said there was no indication that he misunderstood or ignored the import of *Bennett*. Hence, although *Bennett* was

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not the subject of any substantive analysis by the judge, the approach he adopted to the firing sequence was consistent with the principles reaffirmed in that case. For this reason, ground 1 failed.

Ground 2: The judge's conclusion regarding the coroner's findings concerning Soldier B's justification for firing.

The court said this argument was misconceived as it relied on isolated paragraphs from the coroner's ruling when the ruling has to be read as a whole. It rejected the argument that the coroner's conclusions are "cursory, global, and insufficiently reasoned", failing to explain why the shooting of the unarmed driver was justified: "This was a detailed ruling. The coroner's findings are clear and easily discernible across the ruling." Ground 2 therefore failed.

Grounds 3, 4 and 5: Whether the shooting of the unarmed driver was "absolutely necessary"; compliance with the Yellow Card and the treatment of Soldiers A-D collectively

The court considered these arguments together as they covered the same territory. In undertaking this analysis, the court closely examined Soldier B's statements (in 1991 and 2022) and his evidence at inquest, cross-referencing this to the coroner's findings. It also examined the statement of Soldier L⁵ which was read at the inquest. It said that these materials provide the context to the appellant's arguments in grounds 3, 4 and 5.

Ground 3 was based on the argument that the judge failed to apply the "absolute necessity" standard under article 2. The court said this was contradicted within para [62] of the judgment where the judge expressly applied the standard of "absolutely necessity", stating that it equated in practical terms to proportionality in the circumstances as honestly perceived, and then concluded that the coroner's finding of absolute necessity was on to which he was "perfectly entitled."

Grounds 4 and 5 were challenges to the coroner's reasoning on the Yellow Card and on the finding of the unit acting as a single entity. The court held that the Yellow Card was properly treated by both the coroner and the judge as a relevant but non-determinative guide. Soldier B contended that the Yellow Card was a guide rather than a legal code; that it did not purport to exhaustively set out all circumstances in which lethal force might be lawful; and that actions outside its examples may nevertheless be justified under the ordinary law of self-defence is entirely sustainable. The court said the coroner's finding that Soldier B's actions complied with the Yellow Card, in the circumstances are not irrational and, in any event, non-compliance would not determine the legality of the force used.

The court also rejected the argument that the coroner failed to properly engage with Soldier B's own evidence that he never believed the driver to be armed. It said that, viewed in its entirety, Soldier B's evidence speaks to the fact that he could not be entirely sure of the specifics within the conditions he was operating. In addition, the coroner expressly considered Soldier B's individual evidence, made clear findings about the continuing threat posed by all three occupants of the vehicle, and rejected any distinction between them in the circumstances of the rapidly unfolding attack.

⁵ Soldier L was an undercover soldier who impersonated the intended target by driving the UDR man's car to a car park and positioning himself beside a toilet block.

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The court noted that both the coroner and the judge expressly found that Soldier B honestly believed that the entire ASU, including the driver, constituted a unified and immediate threat to life, and that his firing of eight rounds over one to two seconds was a proportionate response in a fast-moving and lethal situation. It said these are factual findings open to the coroner which the judge rightly found no issue with: "The findings are also not just a validation of Soldier B's subjective belief. They are stronger in that were also made on an objective view of the evidence."

The court also rejected the appellant's claim of a structural flaw in the findings on the basis that the coroner improperly treated the actions of Soldiers A-D collectively, despite their evidence and roles being materially different, and despite Soldier B being the only soldier found to have shot the deceased. It said that when the coroner's ruling is read as whole the appellant's assertion that the coroner improperly conflated the actions of all four soldiers lost any traction. That is because the coroner did engage with Soldier B's position throughout his ruling including the fact that he fired at the driver. Also, where conclusions were expressed collectively, this reflected the operational reality that all four soldiers faced the same immediate threat within the same seconds-long timeframe.

The court commented:

"When the facts of this case are fully and properly analysed the appellant's arguments all fall away. The undeniable reality of this case is that the coroner was entirely justified in finding that Soldier B had an honest and genuine belief that L's life was in danger. That is amply validated by the evidence."

The court accepted that the threat posed by the deceased must also be assessed and, having considered the extensive evidence, concluded that the coroner's finding that Soldier B was entitled to view the occupants of the car in the way that he did, as a group of terrorists who posed a collective threat, is sustainable in law:

"Mr Doris was part of the threat to life in this fast-moving situation. In our view, it would be absurd to disaggregate the driver from the other men in this case, all active members of the PIRA, part of an ASU plan to murder which clearly involved an imminent threat to life which Soldier B sought to protect."

Therefore, grounds 3, 4 and 5 also failed.

Overall conclusion

The court concluded that no arguable legal error emerged with a reasonable prospect of success which would justify leave. It said the coroner applied the correct legal tests and reached a rational well-reasoned decision. Within the factual and legal framework, the coroner conducted a lengthy, article 2 compliant inquest over many weeks; heard extensive oral and expert evidence; and made detailed, nuanced findings, none of which are challenged procedurally. In addition to his conclusion that the force used was justified he made criticisms in relation planning, control and operation which have not been impugned which is an indication of the balanced approach he took.

The court noted that the judge then considered those findings. Having done so, he reached the same conclusions as the coroner regarding Soldier B's honest belief, subjective reasonableness,

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and the proportionality of his use of force. It said that the appellant's argument that the judge effectively conducted a full merits review of the coroner's findings and then refused leave on the basis that he personally agreed with the coroner is also unsustainable:

"Having had the benefit of all the evidence which a grant of leave would generate we can confidently say that had we granted leave we would have dismissed the case on its merits. In addition, if any legal error were established, there is a real issue that the relief sought would be inappropriate or unworkable and potentially prejudicial to the position of the other two families who did not challenge the inquest findings. ... To us the challenge really amounted to a disagreement with the coroner's findings. That is not the purpose of judicial review in this area or an effective use of public funds even when article 2 is engaged. Accordingly, for all the reasons we have given, the judge correctly refused leave, and the appeal is be dismissed."

NOTES TO EDITORS

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available shortly on the Judiciary NI website (<https://www.judiciaryni.uk/>).

ENDS

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