

**Monday, 17 November 2014**

**(2.02 pm)**

### **Ruling**

**THE CORONER:** In a witness statement made on 23 April 2014, Mrs Topley, the former wife of Chief Superintendent Mole, says that:

"I know for certain that Brian had offered to be in charge of the 1989 semi-final, even though he'd moved to Barnsley, because he had all the experience. I know that David Duckenfield told Brian that he, as new chief superintendent, wanted to do the match in command."

She has said in a very recent statement that Mr Mole told her this directly.

Mr Beggs, on behalf of the match commanders, submitted that, in the exercise of my discretion, I should exclude this evidence. It is hearsay. It was first disclosed in a statement many, many years after the event. Mr Mole has died and cannot comment upon it. There is a danger that Mrs Topley's recollection will be tainted by all the publicity that there has been unfairly prejudicing Mr Duckenfield. Its probative value is very limited. There is no other reliable evidence suggesting Mr Duckenfield refused help. The evidence is to the contrary.

In my view, this evidence has probative value. As has been emphasised by those representing Mr Duckenfield, he was given this command very late in the day, having had no experience in commanding such a match. That is a relevant feature when assessing what he did.

As Mr Hough put it, the mitigating effect of that explanation could at least

arguably be reduced if Mr Duckenfield refused offers of help.

There seems to me no reason why Mrs Topley should lie.

The other points Mr Beggs makes go to weight. None, in my view, renders her account valueless. Of course the jury would need properly to be directed regarding their approach to her evidence.

In my view, in short, the probative value of this evidence outweighs its prejudicial effect.

Mrs Topley also states that:

"Brian did not really say much about Hillsborough but two things do stick in my mind. Brian told me that if he had been in charge, he would not have opened the gates at Leppings Lane ..."

I omit irrelevant words:

"... but would have delayed the kick-off."

Mrs Topley says this conversation took place very shortly after the disaster, possibly in the early hours of the Sunday morning.

In my view, this evidence has little, if any, probative value. It is an expression in very short form recounted by Mrs Mole of Mr Mole's opinion on a wholly uncertain factual basis.

Mr Mole was not at the match at the material time. We have no idea who told him what. This evidence cannot, in truth, go to what Mr Duckenfield should or should not have done. Its potential prejudicial effect substantially outweighs any probative value it may have.

In the 1990 private prosecution of Mr Duckenfield and Mr Murray, Mr Mole was called by the judge. He was permitted to give what effectively amounted to

expert evidence. He was shown video footage and asked to comment on what he saw. He said, and I summarise and shorten very considerably, that "The action taken by Mr Duckenfield would have been my action". He also said that he was not critical of the decision not to delay the kick-off.

It is not presently intended to adduce Mr Mole's evidence in that regard. The evidence which Mr Mole is to give in read form is contained in a set of proposals which have been circulated.

Absent that part of Mr Mole's evidence, it seems to me that no question can sensibly arise of admitting that part of Mrs Topley's statement. I need say no more about it.

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