



Faculty — Churchyard — Exhumation — Exhumation required for forensic post-mortem in aid of a police investigation into a suspicious death — Whether exceptional circumstances established for granting a faculty for exhumation and reburial after completion of post-mortem and police investigation — Faculty granted

IN THE CONSISTORY COURT
OF THE DIOCESE OF OXFORD

Date: Thursday, 23 March 2023

Before:

THE WORSHIPFUL DAVID HODGE KC, CHANCELLOR

In the matter of:

An exhumation for a forensic post-mortem examination

THE PETITION OF:

A Detective Inspector serving with Thames Valley Police

This is a petition determined on the papers and without notice to any near relative of the deceased

The following cases are referred to in the Judgment:

Re Blagdon Cemetery [2002] Fam. 299

Re St. John's Cemetery, Elswick [2018] ECC New 4

JUDGMENT

Introduction and background

1. This is an unopposed petition, in the form of a letter dated 16 March 2023, by a Detective Inspector serving with Thames Valley Police. It has been submitted after discussions between the police and the Associate Archdeacon, who is aware of the unfortunate circumstances of this case. For reasons which will become apparent, I am handing down this judgment in anonymised form so that the name of the deceased, the location of the grave, and any details which might lead to these being identified are omitted.

2. A very few years ago, a very elderly person passed away in their home. Their general practitioner had attended upon the deceased shortly before the death and was able to certify the cause of death as '*old age*'. At that time, there were no suspicions relating to the death, which was therefore not referred to the local coroner. The deceased was laid to rest in a consecrated churchyard shortly thereafter.

3. Since the burial, evidence has come to light that has prompted concerns as to the true cause of the deceased's death. As a result, the investigating police force now wish to exhume the deceased's body, with a view to conducting a forensic post-mortem examination to investigate the true cause of the deceased's death. A forensic pathologist has confirmed that this should be possible; and a Senior Crown Prosecutor has been briefed and has confirmed that, should there be sufficient evidence in the case, then it would be in the Public Interest to seek to prosecute anyone who might have been involved in causing, or contributing to, the deceased's death.

4. The purpose of the exhumation would therefore be to allow for a forensic post-mortem examination of the deceased, to include the taking of samples for toxicological purposes. To protect the integrity of the police investigation, the police have requested that the exhumation should be completed without prior knowledge on the part of any member of the deceased's family

5. A number of experts will be consulted with before, and will assist in, the exhumation in order to ensure that this is completed in a way that best preserves evidence, but also ensures due reverence and decency. The deceased's remains will be taken to a location identified to the court, and will need to be retained for a sufficient period of time to allow both for an initial post mortem examination to take place and then, if a prosecution ensues, for the defence to request a further post mortem-examination, should they wish to do so. At the earliest opportunity, the deceased's remains will be returned for reverent reburial in the same grave in the churchyard.

6. In advance of this petition, authority for the exhumation has been sought from, and granted by, HM Coroner, who has signed a direction to exhume the deceased's body. To ensure proper planning, the police request that the exhumation should take place between dates identified to the court.

7. In the case of a petition that relates exclusively to exhumation, the chancellor may dispense with the giving of public notice (pursuant to rule 6.6 (3) of the Faculty Jurisdiction Rules 2015, as amended) if satisfied that any near relatives of the deceased still living, and any other persons who, in the opinion of the chancellor, it is reasonable to regard as being concerned with the matter, are either (a) petitioners, or (b) consent to the proposed faculty being granted. However, in the particular circumstances of the present case, it is neither just nor expedient for the court to require special notice of this petition to be given to anyone who may be interested in the proposed exhumation because the deceased's immediate next of kin have been identified as

suspects in the investigation into the suspicious death. FJR 6.6 (4) provides that in any other case of a petition that relates exclusively to exhumation, the chancellor may dispense with the giving of public notice, and may direct that any of the persons referred to in paragraph (3) who are not petitioners be given special notice. As I read that rule, I can both dispense with the giving of public notice, and direct that no-one referred to in paragraph (3) need be given special notice. I consider that it is just and expedient to take that course in the present case. Alternatively, and insofar as necessary, I consider that the suspicions entertained in relation to the deceased's next of kin constitute '*other factors*' which mean that it would not be expedient to require the giving of public notice of this exhumation application; and I dispense accordingly with the giving of such notice under FJR 6.7. I therefore proceed in the absence of notice of this exhumation application to any of the deceased's relatives. I recognise that this imposes a duty of full and frank disclosure on the applicant detective inspector of police. I also recognise that an exhumation will be intensely upsetting for the deceased's relatives; and that this will be exacerbated by the lack of any advance warning or notice.

The legal framework

8. It is appropriate for me to set out the legal framework by reference to which this exhumation application falls to be determined. The leading authority is the decision of the Court of Arches (the appeal court for the southern province of Canterbury), comprising Cameron QC (the Dean of the Arches) and Chancellors Clark QC and George QC, in the case of *Re Blagdon Cemetery* [2002] Fam. 299. The actual facts are irrelevant. In the consistory court, the chancellor had refused a faculty on the grounds that there was no good and proper reason for exhumation, which was likely to be regarded as acceptable by right-thinking members of the Church at large, since there had been too great a lapse of time since the burial, and it was not a sufficient reason that the purpose of the petition was to enable the petitioners to visit their son's grave more easily.

9. The petitioners' appeal was allowed. The Court of Arches held that since there was a presumption that Christian burial was permanent, and that human remains should not be portable, only exceptionally would a faculty for exhumation be granted; that it was for the petitioner to satisfy the court, on the balance of probabilities, that there were special circumstances which constitute good and proper reason for making an exception to the norm that Christian burial was final; and that in deciding whether such good and proper reason had been made out, it was not practicable to consider whether that reason was likely to be regarded as acceptable by right-thinking members of the Church at large. On the facts, the court was satisfied that good and proper reason had been shown for granting the petition. The appeal court directed that a faculty should issue out of the consistory court for the diocese, on the usual terms, for the exhumation of the human remains from the cemetery and for their transportation to, and reinterment in, their new resting place.

Analysis and conclusions

10. The question I have to determine is whether, on the balance of probabilities, the facts of this particular case warrant a finding that it should be treated as an exception to the normal rule that Christian burial is final: see *Blagdon* at page 307 A-B. Although the Court of Arches in that case considered various factors which can arise in connection with a petition for a faculty for exhumation, none of them were similar to the facts of the present case. I have not been able to identify any reported case where an exhumation has been sought to facilitate a forensic post-

mortem into the cause of the deceased's death. However, the court has granted orders for exhumation in aid of DNA analysis. For present purposes, the most relevant, and helpful, authority is the decision of Chancellor Euan Duff in *Re St. John's Cemetery, Elswick* [2018] ECC New 4 (in the Diocese of Newcastle). There the petitioner wished to have the remains of her late father-in-law temporarily exhumed for DNA analysis. She claimed that in 2018 her husband had been wrongly convicted of two rapes dating back to 1983 and 1988. The petitioner's sister-in-law did not believe that her brother had committed the offences of which he had been convicted, but that her own father might well have been the perpetrator. The Chancellor considered that the petitioner had made out a case for the temporary disinterment of the remains and sampling of bone fragments for DNA analysis, to establish whether there was a possibility of a miscarriage of justice. He accordingly granted a faculty. At paragraph 11 of his Judgment, Chancellor Duff said that:

This is an entirely different situation from those envisaged in *Re Blagdon Cemetery* [2002] Fam. 299 or the numerous other authorities dealing with petitions for exhumation and transfer of remains on a permanent basis.

11. In the present case, the applicant has satisfied me, on the balance of probabilities, that special circumstances exist which constitute good and proper reasons for making an exception to the normal rule that Christian burial is final. Those special circumstances consist in the need to establish, if possible, the true cause of the deceased's death. This is necessary in justice to the deceased; and in justice to the deceased's next of kin. If any of them were responsible for, or contributed to, her death, then that fact should be established, and they should be brought to justice. If, on the other hand, they are innocent of any involvement in the deceased's death, then the suspicions that have been raised in relation to them should, if possible, be dispelled.

12. For these reasons, the court will grant a faculty for the exhumation of the deceased's human remains from their present place of burial and their transportation to the location identified to the court, where they are to be retained for a sufficient period of time to allow both for an initial post mortem examination to take place and then, if a prosecution ensues, for the defence to request a further post mortem-examination, should they wish to do so. At the earliest opportunity, the deceased's remains are to be returned for reverent reburial in the same grave in the same churchyard. I direct (by way of condition) that the exhumation is to take place at a time and date to be notified in advance to the Registry and the parish church, which is not to be within two hours of the scheduled start or end time of any service or other special event (such as a marriage, baptism or burial) in the church or its churchyard, or at a time when children are likely to be arriving at, or leaving, any local school. The police will need to discuss with the parish church how to mitigate the effects of the exhumation on anyone visiting the grave.

13. The applicant must pay the costs of this application; but, in the usual way, I charge no fee for this written judgment.

David R. Hodge

The Worshipful Chancellor Hodge KC

23 March 2023