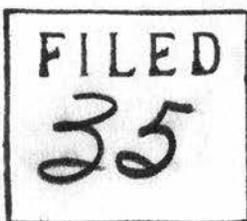


CORONERS: Witnesses appearing at coroner's inquest entitled to be aided by counsel but witnesses and their counsel not authorized to cross examine other witnesses.



October 8, 1951

10-8-51

Honorable Philip A. Grimes  
Prosecuting Attorney  
Boone County  
Columbia, Missouri

Dear Sir:

The following opinion is rendered in reply to your recent request reading as follows:

"In reply to your letter of June 13, I regret that I must ask for an opinion from your office with reference to the question of power of attorneys representing persons involved in a Coroner's inquest or other persons who might be liable, depending upon the Coroner's jury verdict, to interrogate witnesses or otherwise participate in the inquest.

"I have advised our Coroner to a limited extent, but he appears not to be completely satisfied and I will appreciate your opinion."

Chapter 58, RSMo 1949, entitled "Coroners and Inquests" containing Missouri's statutory provisions relating to powers and duties of coroners and the manner of holding inquests is silent on the question posed in your inquiry. We have failed to discover any adjudicated cases in this state on this question. In this event we look to other jurisdictions and authorities for the general rule on the question.

In 18 C.J.S., Coroners, Section 20, we find the rule stated as follows:

"The general rule is that neither the witnesses nor others whose rights may be affected by the verdict or findings of

Honorable Philip A. Grimes

the inquest have a right to be represented by counsel at the inquest. The State, however, may be represented by a district attorney, who has the power to cross-examine witnesses; and in at least one jurisdiction, where the person suspected of causing the death is under arrest, he has the statutory right to be represented by counsel, who may cross-examine the witnesses."

In 13 Am. Jur., Coroners, Section 9, we find the rule stated as follows:

"An accused or suspected person has no right to appear by counsel at a coroner's inquest or to cross-examine witnesses unless such right is conferred by statute."

The reason for the rule pronounced by both of the above cited authorities is disclosed in State v. Griffin, 98 S.C. 105, 82 S.E. 254, l.c. 255, where the court spoke as follows:

"The court was also requested to rule upon the question whether a person, in anticipation of the action of the coroner's jury, has the right to appear by counsel and to cross-examine the witnesses in behalf of his client. The proceedings are intended to be merely a preliminary investigation and not a trial involving the merits. The only object which a suspected person could have in appearing by counsel would be to prevent a full investigation insofar as it might tend to incriminate him and thus defeat the purpose of the inquest."

In Aetna Life Insurance Company v. Milinard, 82 S.W. 364, 118 Ky. 716, evidence obtained at a coroner's inquest was sought to be introduced in the trial of a case based on an accident insurance policy. In ruling such evidence inadmissible, the court spoke as follows at 118 Ky., l.c. 725-726:

"While the coroner's inquest is a public function, made on behalf of the State, and while a record of it is required to be made and kept, it cannot on any well

Honorable Philip A. Grimes

grounded principle of American common law, become evidence in another inquiry or suit as to the cause of the death investigated. The business of this tribunal is by statute to collect promptly the facts concerning deaths which the coroner has reason to believe were the result of crime. Like the grand jury, it projects an ex parte investigation of supposed or alleged crime resulting in homicide for the purpose of aiding in the administration of the criminal laws of the State. The accused is neither represented, nor has the right to be, at the inquiry. \* \* \*."

The authorities above quoted hold that witnesses subpoenaed to testify at a coroner's inquest may not themselves, or by their counsel, participate in the proceedings to the extent of cross-examining other witnesses appearing at the inquest, but we have found no authority which would deny to any person subpoenaed to testify at such an inquest the right to have his attorney at his side to aid and counsel him in giving answers to questions propounded to him so as to guard against self-incriminating testimony, and guaranteeing that statements given by such witness will be voluntary and made without coercion of any kind. It is important to the proper administration of justice that relevant testimony given at a coroner's inquest be admissible in criminal proceedings that may at a later date involve such testimony, and the test of its subsequent admissibility in the criminal proceeding is found discussed in *State v. Burnett*, 206 S.W. (2d) 345; 357 Mo. 106, 1.c. 112, 113, 114, where the court spoke as follows:

"Section 19 of article I of the 1945 constitution provides: 'That no person shall be compelled to testify against himself in a criminal cause. . . .' The immunity afforded a witness by the "Constitutional provisions is broad enough to protect him against self-incrimination before any tribunal in any proceeding; it is not merely to shield a witness at his final trial but extends its protection in preliminary proceedings.' In *re West*, 348 Mo. 30, 152 S.W. 2d 69, 1.c. 70.

Honorable Philip A. Grimes

"In the case of State v. McDaniel, 336 Mo. 656, 80 S.W. 2d 185, we ruled the testimony given by the accused at a coroner's inquest, if given voluntarily, could be used against him at his trial for the reason that he could waive his constitutional right to immunity. We also ruled that where a defendant was subpoenaed as a witness and appeared at a coroner's inquest and testified, that fact alone did not make his testimony inadmissible. The test as to the admissibility of this character of testimony is no longer whether it was made in a judicial proceeding under oath but: Was it voluntary? If so, then it is admissible, otherwise not. Whether such testimony was voluntarily given must be determined on the particular facts of each case: 'Whether the defendant was ignorant; whether he had counsel; whether he was advised of his rights; whether coercive methods were employed in obtaining the statement from him, etc.' Loc. cit. 195. In that case the coroner advised him of his rights and he understood this advice. We held that under those circumstances the defendant's testimony given at the coroner's inquest was admissible at the trial.

"In this case the appellant was arrested by the sheriff at the restaurant and taken by him to the coroner's inquest. In the presence of his wife and son Gene he asked the sheriff if he had to testify and was told they would all have to testify. The appellant had no attorney. He testified that he could sign his name but he could not read or write. Both the sheriff and the acting coroner testified that they did not advise the appellant about his constitutional rights. In fact, he was not allowed to be present when the other witnesses testified but was kept in an automobile. No witness was allowed to hear the testimony of the other witnesses. Strangely, the name of the appellant, his wife and his son Gene were indorsed on the information as witnesses for the state.

Honorable Philip A. Grimes

"In the case of State v. Pearson, 270 S.W. 347, we held that the defendant's testimony before the coroner's inquest was involuntary. The facts in that case were very similar to the facts in this case. In ruling that case we said:

"We are of the opinion in this case that, on the facts aforesaid, the defendant did not know that the testimony which he was giving before the coroner might be used against him as an admission at the trial, nor does it appear that he was so advised by any one. The state, through its coroner, was conducting the holding of this inquest. It was presided over by a justice of the peace, who presumably must have known that defendant, then in charge of the officer as a prisoner and under suspicion, should have been informed as to his legal rights in case he testified under such circumstances. We are of the opinion that defendant did not voluntarily appear as a witness before the coroner with knowledge as to his constitutional rights, and that the foregoing testimony should have been excluded.' Loc. cit. 351.

"See also State v. Young, 119 Mo. 495, 24 S.W. 1038; State v. Bartley, supra; and State v. Conway, 348 Mo. 580, 154 S.W. 2d 128.

"Under the facts outlined above, we are of the opinion that this appellant did not voluntarily testify at the coroner's inquest and that the court erred in admitting this testimony on cross-examination of the appellant."

The presence of an attorney at a coroner's inquest to counsel his client should in no way disrupt the orderly proceedings of the inquest so long as such counseling is restricted to advice given to the client, and it is not believed that such counseling constitutes a participation in the inquest such as is prohibited by the cases heretofore cited in this opinion.

Honorable Philip A. Grimes

CONCLUSION

It is the opinion of this department that witnesses subpoenaed to testify at a coroner's inquest are entitled to be counseled by their attorney so long as such counseling is restricted to advising the client as to his right to refuse to answer any question that might tend to incriminate him, but that such witness or his attorney is prohibited from taking any further part in the inquest by means of cross-examination of other witnesses appearing thereat.

Respectfully submitted,

JULIAN L. O'MALLEY,  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
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