Neutral Citation Number: [2025] EWCA Crim 1036

Case No: 202302376 B1

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT AT AYLESBURY
Mr Justice Cavanagh
T20237166

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30 July 2025

Before :

LORD JUSTICE EDIS
MRS JUSTICE McGOWAN
and
HIS HONOUR JUDGE LICKLEY KC
Sitting as a judge of the Court of Appeal Criminal Division

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Between :

JUSTIN PLUMMER	**Appellant**
- and -	
THE KING	**Respondent**

- -
- -

Katy Thorne KC and Peta-Louise Bagott (assigned by the Registrar) for the **Appellant**
John Price KC, Abigail Husbands and Matthew Hodgetts (instructed by **The CPS Appeals Unit**) for the **Respondent**

Hearing dates : 15 and 16 July 2025

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Approved JUDGMENT

Lord Justice Edis:

1. This is an appeal against conviction by leave of the full court. The appellant, Justin Plummer, then aged 50, was convicted on 19 June 2023 of the murder of Janice Cartwright-Gilbert who died on 28 February 1997. There was no doubt that she had been murdered and the issue for the jury was whether they were sure that it was the appellant who had committed the crime.

2. The prosecution case was based on an alleged confession which was said to have been made by the appellant to a fellow prisoner, Christopher Dunne, while on remand for other offences in Bedford Prison in June 1997. The confession was recorded in a witness statement dated 18 December 1997 by Mr Dunne. In June 1997, it was agreed, Mr Dunne shared a cell with the appellant, and the witness statement says that in two conversations, while he was intoxicated with cannabis, the appellant confessed to a number of crimes, including the murder of Ms. Cartwright-Gilbert.

3. Mr. Dunne died in 1999. The witness statement he had made was read to the jury by leave of the judge, who ruled that it was admissible as hearsay evidence, applying section 121 of the Criminal Justice Act 2003. He further ruled that it should not be excluded under either section 126 of that Act or section 78 of the Police and Criminal Evidence Act 1984. He did not consider after the close of the prosecution case whether the evidence was so unconvincing that the appellant's conviction would be unsafe as required by section 125 of the 2003 Act, and was not asked to do so.

4. We record at the outset our gratitude for the assistance we have received from counsel in their written and oral submissions. We shall not in this judgement mention all of the many points which were argued which will summarise the competing arguments briefly but we have considered them all.

The law

5. It was agreed before us, as it was before the judge, that a statement by a deceased person which says that a defendant confessed their guilt to them is "multiple hearsay" for the purposes of section 121 of the 2003 Act. It was therefore to be excluded unless the court decided that section 121(1)(c) was satisfied (sub-sections (a) and (b) being immaterial). This allows a statement to be admitted to prove the fact that an earlier hearsay statement was made if:-

> "the court is satisfied that the value of the evidence in question, taking account how reliable the statements appear to be, is so high that the interests of justice require the later statement to be admitted for that purpose."

6. A confession is a hearsay statement for this purpose, see section 121(2).

7. The court has what is described in the sub-heading to section 126 of the 2003 Act as a "general discretion to exclude evidence". Section 126(1)(b) provides that this arises where:-

> "The court is satisfied that the case for excluding the statement, taking account of the danger that to admit it would result in undue waste of time, substantially outweighs the case for admitting it, taking account of the value of the evidence."

8. It seems highly unlikely that a statement which was admitted under section 121(1)(c) would then be excluded under section 126, and we do not propose to consider section 126 separately.

9. Section 78 of the Police and Criminal Evidence Act enables the court to exclude prosecution evidence if it considers that its admission would have an adverse effect on the fairness of the proceedings. This power is not, of course, limited to hearsay evidence but is preserved in the case of hearsay by section 121(2)(a) of the 2003 Act. This did require separate consideration on the facts of this case.

10. Section 125 of the 2003 Act applies in this case because the case against the appellant was based wholly or partly on a statement not made in oral evidence in the proceedings. It requires the court to stop the case if it is satisfied at any time after the close of the case for the prosecution that the "evidence provided by the statement is so unconvincing that, considering its importance to the case against the defendant, his conviction of the offence would be unsafe". The words "unconvincing" and "unsafe" describe legal tests which are different from that which is the standard test for trial judges to apply in deciding whether a case should be left to the jury. That test is usually referred to in shorthand as the *Galbraith* limb 2 test, as explained in *F(S)* [2011] EWCA Crim 1844; [2011] 2 Cr App R 28 at [36] and [37]:-

> "36 The authority of *Galbraith* (1981) 73 Cr. App. R. 124; [1981] 1 W.L.R. 1039, with its emphasis on the responsibilities of the jury as the fact-finding body responsible for delivering the verdicts, is undiminished. The principles have neither been modified nor extended for the purposes of addressing trials which involve historic unreported sexual crimes. In accordance with the second limb of *Galbraith* there will continue to be cases where the state of the evidence called

> by the prosecution, and taken as a whole, is so unsatisfactory, contradictory, or so transparently unreliable, that no jury, properly directed, could convict. In cases like these it is the judge's duty to direct the jury that there is no case to answer and to return a "not guilty" verdict. But in making this judgment, the judge must bear in mind the constitutional primacy of the jury, and not usurp its function.
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> 37 It is no doubt true that cases of long delayed allegations, whether in the field of sexual offences or otherwise, impose the requirement for special care if this question arises for consideration. Judges will find it easier to ensure that submissions of "no case" concentrate on correct principles if expressions such as "safe to convict" or "safely left to the jury" are avoided. The test enunciated in *Galbraith* is clear. If the jury does convict, and the conviction may be unsafe, it must be dealt with in this court."

11. The statute therefore affords a particular protection for defendants in the case of a prosecution case which depends wholly or substantially on hearsay in which the judge is required to do something which is strictly forbidden in most other situations[1], namely to take a view on the safety of any conviction which may result.

12. If the statement is admitted, and the case is not stopped under section 125 of the 2003 Act, then the judge is required to direct the jury in a way which will assist them in their duty to test and assess any hearsay material. In *R. v Riat* [2012] EWCA Crim 1509; [2013] Cr. App. R. 2 at [3] the court said this:-

> "As everybody knows, the CJA 2003 gave effect to the report of the Law Commission, itself the product of long consultation and deliberation. The common law prohibition on the admission of hearsay evidence remains the default rule but the categories of hearsay which may be admitted are widened. It is essential to remember that although hearsay is thereby made admissible in more circumstances than it previously was, this does not make it the same as first-hand evidence. It is not. It is necessarily second-hand and for that reason very often second-best. Because it is second-hand, it is that much more difficult to test and assess. The jury frequently never sees the person whose word is being relied upon. Even if there is a video recording of the witness' interview, that person cannot be asked a single exploratory or challenging question about what is said. From the

[1] Section 41(2)(b) of the Youth Justice and Criminal Evidence Act 1999 requires the court to assess the safety of a jury's conclusion on an issue of evidence were to be excluded.

> point of view of a defendant, the loss of the ability to confront one's accusers is an important disadvantage. Those very real risks of hearsay evidence, which underlay the common law rule generally excluding it, remain critical to its management. Sometimes it is necessary in the interests of justice for it to be admitted. It may not suffer from the risks of unreliability which often attend such evidence, or its reliability can realistically be assessed. Equally, however, sometimes it is necessary in the interests of justice either that it should not be admitted at all, or that a trial depending upon it should not be allowed to proceed to the jury because any conviction would not be safe."

13. In *R. v BOB* [2024] EWCA Crim 1494; [2025] 1 Cr. App. R. 14 this court said:

> "7. If the evidence is admitted, then should the case subsequently be stopped under s.125? This safeguard should be considered in all cases where it applies, at the initiative of the court if the parties do not raise it. It will generally be best determined at the conclusion of all the evidence. This is reinforced by the fact that this is the stage when the judge is likely to have drafted legal directions and to be consulting counsel about them. In a case of this kind, where the prosecution seeks to prove an important and disputed fact by relying on hearsay, the judge is required to give a careful and tailored direction to assist the jury in deciding whether they can safely rely on the hearsay or not. Its sufficiency will be relevant to the safety of any resulting conviction and it will be helpful for the judge to have regard to it when carrying out the assessment required by s.125."

14. *BOB* was decided after the trial in this case, and the judge did not therefore have the benefit of its observations either about the duty to consider section 125 in this case whether invited to do so or not, or about the type of direction which is required in such a case.

The history of the proceedings

15. On 16 December 1998, in the Crown Court at St. Albans (Mr Justice Gage), the appellant was convicted of the murder of Janice-Cartwright Gilbert on 28 February 1997.

16. Earlier, on 15 May 1998, in the Crown Court at Luton, the appellant had pleaded guilty to five counts of burglary and on 2 December 1998, before the same Court, he pleaded guilty to a sixth offence of burglary. On 17 December 1998, he pleaded guilty to 21 other offences on other indictments. On the same date, he was sentenced to imprisonment for life for murder and concurrent terms of imprisonment of varying lengths for the other offences.

17. On the 17 January 2000, the full Court refused a renewed application for leave to appeal his conviction for murder.

18. On 1 March 2000, the appellant made an application to the Criminal Cases Review Commission (CCRC) for his case to be referred back to the Court of Appeal; this was rejected.

19. On 20 November 2017, the appellant made a further application to the CCRC. This resulted in a reference by the CCRC. On 15 July 2021, the full Court quashed the conviction for murder and lifted the order that the two offences of common assault should lie on the file (Counts 19 & 20 of from indictment 1 of 1997/1998) and ordered that the appellant be retried on one count of murder and be re-arraigned on two otherwise unrelated counts of common assault which were relied on as evidence of violent propensity.

20. On 19 June 2023, in the Crown Court at Aylesbury the appellant (then aged 50) was convicted of the murder of Janice-Cartwright Gilbert on 28 February 1997 for a second time. The appellant had entered guilty pleas to the two counts of common assault on 25 April 2023.

21. On 25 July 2023, before the same Court, the appellant was sentenced to imprisonment for life; the period of 16 years was specified as the minimum term under s.322 Sentencing Act 2020 for the offence of murder. He was sentenced to one week imprisonment concurrent for each common assault offence.

22. The two trials were very different. In the 1998 trial the prosecution relied on evidence from supposed experts who compared the marks left on the deceased when her killer stamped on her face, with the sole of the appellant's right Nike trainer. At the first trial the forensic evidence stated, wrongly, that there was conclusive proof that the marks had been made by the appellant's trainer. That evidence was the main basis of the prosecution case at that trial and its flawed nature explains why that conviction was quashed. That first trial was much shorter than the second trial.

23. Forensic evidence at the second trial stated that no blood or saliva had been found on the appellant's trainers in thorough testing in both 1997 and 2021. The trainers did not appear to have been washed. Footwear mark analysis evidence, which was in effect agreed, showed that there was moderately strong support for the proposition that the marks on the face were made by the appellant's right trainer. There was a visible pattern in the marks which was consistent with them being made by a size 6 training shoe of the type worn by the appellant. His shoes were not new, and there was wear on their soles which was consistent with some signs in the marks found on the face, but the definition seen in the skin was not clear enough to conclude that they were made by that shoe. The shoe was quite a common type.

24. The main difference between the trial in 1998 and the trial in 2023 was the prosecution reliance on the alleged confessions made by the appellant to Mr Dunne in June 1997 when they shared a cell at Bedford Prison. These had been available at the time of the first trial, but the prosecution decided not to rely on them. Mr Dunne was not called as a witness, and by the time of the second trial he was dead. The prosecution changed its mind. When he was alive he was said to be unreliable, but after his death he was put forward as reliable. These decisions were taken many years apart and by different people, so this is not a critical observation, and the prosecution were entitled to re-evaluate the case in the light of the quashing of the conviction and the direction for a retrial.

25. The original position taken by the prosecution does have consequences. Mr Dunne's evidence was not the subject of a full disclosure process while everything was still available. He was then not cross-examined in 1998 when that material could have been put to him. If the conviction had been quashed and a retrial ordered after his death then the application to adduce his evidence as hearsay would have related to transcripts of his evidence and all the material which had been deployed would have remained available. Because he was regarded as unreliable in 1998 none of that happened, and the hearsay application related only to his witness statement.

26. A further consequence was that a great deal of evidence was adduced in the second trial which was designed to show that the confession was reliable, or alternatively that it was not. For example, in the first trial it had been accepted that nothing had been stolen by the murderer, but in the second trial the prosecution sought to prove that the appellant's alleged confession that he had gone there to burgle and had in fact stolen some jewellery was true. Other evidence was examined in exhaustive detail to attempt to prove that, as he was said to have confessed, the appellant had been on his way to his sister's at the time of the murder. There was no direct evidence about these matters, which only became prominent after the retrial was directed and a decision to rely on Mr Dunne was taken. This was well over 20 years after the event, and certainty on these matters was likely to be elusive. These attempts resulted in a long trial, and a very lengthy summing up, which runs to 230 pages of transcript before the jury retired to consider its verdict.

The facts

27. On 28 February 1997, Janice-Cartwright Gilbert ("the deceased") was murdered. She lived with her partner Roderick Cove. They lived at 2 East End Lane in the village of Wilden, Bedfordshire. They had moved there in September 1995. A wooden bungalow on the site at East End Lane had been demolished. They were living in a caravan with three bedrooms on site whilst their new

house was built. The plot of land was remote and rural. Materials were kept on site, both for the purposes of their electrical business and also for the construction of the new house. One of the bedrooms was set up and used as an office with a landline and the deceased spent the vast majority of her time there. Her habit was to lock the doors to the caravan when she was inside. The third bedroom was used by their dogs. At the time of the murder there was little by way of building material on site. There were some tools.

28. On 28 February 1997 Roderick Cove left for London at approximately 7:15 a.m. He was in London all day. Paul Simpson, a glazier attended the plot of land at approximately 12:30 p.m. The gate to the field was open. There were no signs of anyone being in the caravan or nearby. He did not hear the deceased's 2 Irish Setter dogs. He went into the house to do some silicon beading to the windows. He was there for about half an hour. Whilst there he did hear a thudding noise that sounded like boxes falling but he didn't think anything of it. Lindsay Prigmore spoke to the deceased at about 1:00 p.m. and was expecting to receive a fax from her. He called her back at 5:00 p.m. as she had not sent the fax, but the line was engaged. The deceased had sent a fax to Margaret Cook at 1:10 p.m. At around 2:00 p.m. Denise Williams had returned home and saw smoke coming from behind the caravan. She called the deceased, but there was no answer and so she went to see what was happening. All the blinds of the caravan were down; the deceased's car was on the drive. Denise Williams knocked on the door but there was no response. The caravan then started to flame. Denise Williams ran back to her home and called the Fire Brigade and then returned to the scene to wait. Evelyn Stacey and John Stacey, some other neighbours, came and joined Denise Williams. John Stacey ran towards the caravan and opened the door; he discovered the body of the deceased and attempted to pull her out. There was something around her neck either made of rubber or plastic. As he pulled the body out, there was a pair of scissors to the left side of the neck and what appeared to be a knife to the right side of her neck and some kind of cable about her shoulders.

29. Accordingly, the murder took place between 1.10 pm and 2 p.m.

30. The victim died, according to the Consultant Forensic Pathologist Dr Carey, as a result of stab wounds to the chest causing blood loss and a puncture of the lung that prevented the heart from expanding properly and pumping blood round the body. There were also a few tiny petechial haemorrhages in the lining membranes of both eyes which could have been a manifestation of compression of the neck; there was also damage to the deceased's voice box. The deceased had been stamped to her head and face causing patterned bruising consistent with footwear marks. There was a deep laceration to the back of the head 3cm in length caused by blunt force. There

were facial injuries and a penetrating incised wound just in front of the left ear. He noted the injuries caused by the scissors and knife found. That knife however was too short to have caused the deepest chest wound. One stud type earing was found in the left ear. There was no similar earing in the right ear. He said a scenario might be that the victim was pushed or punched to the ground outside the caravan where she was kicked or stamped on. She may then have been taken into the caravan where she was stabbed either unconscious or semi unconscious and there stabbed repeatedly. If that is what happened, it is not reflected in what the appellant is said to have said to Mr Dunne.

31. The prosecution case was that the appellant had gone to burgle the property, had been disturbed by the deceased and had murdered her to cover up a burglary gone wrong.

32. The prosecution case at trial was centred around the Christopher Dunne evidence. Mr Price KC accepted that the evidence was the nucleus of the prosecution case and while he did not accept the evidence was the sole evidence, the alleged confession was a very prominent part of the prosecution case. That is evident from his closing speech to the jury. He therefore accepted that if the evidence of the confession was wrongly admitted then he could not submit that the conviction was safe. He did contend that there was a case to answer without the confession and that, if it were to be quashed on that basis, he would seek a retrial.

33. In addition to Mr Dunne's statement the prosecution relied upon the witnesses to the events, the appellant's convictions for a large number of burglaries and other offences of dishonesty in Bedfordshire, during the period from November 1996 to February 1997. He was proved to have been active as a burglar in and around Wilden at around the time of the murder. The appellant told lies in his police interviews about these burglaries in March and April 1997. He also told Mr Dunne in detail about two of them, giving information that only the burglar could know. This suggested that he was confessing crime to Mr Dunne who recollected and reported accurately what he had been told.

34. The prosecution also relied on these matters:-

    i) Evidence about the fire damage and how the fire had started. The evidence was that the fire had started in the dogs' bedroom. The start of the flaming fire would have been somewhere between 1:30 p.m. and 1:40 p.m.

    ii) That items had been taken from the caravan, which supported the prosecution assertion that the motive of the killer was burglary. This included a watch and/or jewellery which Roderick Cove believed to have been taken.

iii) Footwear and foot mark evidence. The size 6 Nike Air Screech trainers were found at the appellant's home when he was arrested. No blood or saliva was found on the shoes. Ms Sarah Kalageros gave evidence that there were three possible explanations for the absence of blood and saliva: the shoe was not worn by the killer, it had been worn by the killer, but blood and saliva had not been transferred and/or the blood and saliva had been removed after the incident. She could not say which of the three was more likely.

iv) Mr Padraig O'Shea concluded, in his opinion, that the marks on the deceased's face could have been made by the appellant's shoe and that there was moderately strong support for the proposition that the marks were made by the right heel of the appellant's right shoe rather than not.

v) Evidence that the appellant carried a knife in 1993/1994 and that the witness who provided a statement to the police about that was asked by the appellant her to change that statement, but she had not done so. Bad character evidence of previous violence was adduced. These occasions when the appellant had used violence were quite different from what the killer had done on this occasion.

vi) Paul Simpson gave evidence that he saw a red Metro near East End Lane driving towards Wilden at about 12:45 p.m. on the day of the murder. The appellant had owned a red Metro car which he agreed that he got rid of around the time of, or just after the murder.

vii) Claire Fisher gave evidence about being given a lift by the appellant in the red Metro and was told by the appellant that he had caved his ex-girlfriend's head in. She also gave evidence about being offered jewellery by the appellant between 15 and 21 March 1997 and that the fencing of the appellant's home address was burnt, the prosecution case being that this was where the appellant burnt his clothes after 28 February.

viii) That the curtains had been closed in some of the burglaries committed by the appellant, and the killer had closed the curtains of the caravan.

ix) That the appellant's footprints were found at three of the six burglaries that had taken place in the vicinity between 25 January 1997 and 27 February 1997.

35. The defence case was that the appellant was not the murderer. The prosecution had not proved that the reason why the killer went to the address was to burgle. There was a possibility that the murderer was someone else, who remained unidentified and who had not gone there with the

intention of burgling the property, but was someone who had a motive for killing, unconnected with being disturbed during a burglary.

36. The evidence of Mr Dunne was disputed. The defence relied upon the fact that there was no forensic evidence in the form of blood and fibres linking the appellant to the murder, that the appellant had no history of confronting burglary victims, that there was no evidence of anything being stolen namely a sander, a watch and jewellery, parts of the red Metro were found and not linked to the incident after forensic examination, that a battery found at the scene had not come from the burglary at a garage for which the appellant was responsible.

37. A witness had said they had been with the appellant on 28 February at a time after 12.45hrs. Witnesses who had seen a man near to the scene who had made a photofit image and picked out a different person at an identification parade and another witness who had seen a person near to the scene after 1:00pm who said the photofit was of the same general appearance to the man that she saw.

38. The appellant gave evidence. He admitted that he had been a prolific burglar and car thief and had been in trouble from early on in his life. When he had moved to Wootton after his release from prison on 1 November 1996, he had embarked upon a long series of burglaries. The appellant said he did not seek out violent confrontation when he was carrying out the burglaries and he would run away if disturbed. He said he had never hit or confronted anyone physically during a burglary. He would steal anything that could be easily taken. He very rarely closed curtains during burglaries and would only do so if it was winter and got dark early because the beam of the torch might attract attention. He wouldn't draw curtains during the day.

39. He admitted he had committed the six burglaries and that the Nike trainer, exhibit SPR/1, was his right trainer and that he had worn that shoe at some of the burglaries. On the night of the 27/28 February 1997, he had stolen a dustbin full of cigarettes and tools from the garage in Wootton, which was very near his home.

40. When interviewed by the police, he could not remember what he had done on the day of the murder. He was able to reconstruct where he was from the information given to him by his mother and gathered by his solicitor. On the evening of 28 February 1997, the appellant had driven to Nottingham and his mother had gone with him. They had brought children back, including his son Joe. The visit was arranged during the day of 28 February as Michelle Sneddon, the mother of his son and also his brother Adam's children, was about to be evicted.

Christopher Dunne

41. The evidence that is the subject of this appeal concerns a cell confession said to have been made to Christopher Dunne when he and the defendant shared a cell in Bedford prison for about three weeks in June 1997. Christopher Dunne died in 1999. The prosecution argued successfully that the evidence of the confession should be adduced as hearsay evidence. The defendant denied making any confession to Christopher Dunne about the murder.

42. The prosecution took the decision not to call him as a witness in the first trial. In one undated disclosure note it is said that the decision was based on an assessment that he was regarded as unreliable and not credible due to him being offered an inducement. In other disclosure notes other reasons are given namely that other evidence was sufficient to prove the case in particular including the then available footwear evidence and the suggestion of an inducement was not maintained.

43. Christopher Dunne gave a witness statement to the police on 18 December 1997 after he had been released from prison. Before turning to what he said the sequence of events is important. Christopher Dunne was a police informant. He was registered as such in late 1996. He had a number of criminal convictions for violence and dishonesty set out in agreed fact 69 . He had on occasions been paid for information provided to the police. His handler was DC Branagan who was a junior officer working on the murder investigation from late February 1997.

44. The key events are as follows:

    i) Christoper Dunne was registered as an informant in October 1996. A report by DI Nash dated 5 March 1998 records his meetings with the police and his handler DC Branagan from that time. He was seen by officers and gave information on 4 October 1996 and was paid, on 10 October and was paid, on 16 October there is no mention of payment and on 11 December 1996 there is also no mention of payment. The contact sheets for those four meetings have not survived. There is no mention in this report of the August meetings with DC Branagan and DC Cox. The notes and reports that are still available are however for the meetings from August 1997 with which we are concerned beginning with contact sheet number 5.

    ii) The murder occurred on 28 February 1997. There is no note of any contact with Christopher Dunne between December 1996 and August 1997.

iii) Agreed facts 51 – 52 show that from 28 February 1997 and 7 March 1997 news reports contained references to how the victim was killed including that the attack was frenzied and violent, that the victim was found in a burnt caravan and had been stabbed to death before the fire.

iv) Agreed fact 134 was that the murder was reported in the local newspapers from 2 March 1997 to 10 August 1997.

v) On 12 April 1997 Christopher Dunne was involved in a violent incident in a Balti House restaurant and was arrested on 28 May 1997 and charged with assault occasioning bodily harm . He was remanded to Bedford prison arriving on remand on 30 May 1997. He was convicted of that offence in October 1997.

vi) The appellant requested to move to a cell to share with Christopher Dunne and they did from 6 June to 23 June 1997.

vii) On 9 July 1997 Christopher Dunne was sentenced to five months imprisonment.

viii) On 10 August 1997 an article in the 'Bedford on Sunday' newspaper informed readers that DC Branagan and DC Cox had travelled to the USA to visit the Nike organisation regarding the footmark and shoe issue. The article contained a large drawing of the sole of a Nike shoe, it referred to a footprint of a Nike trainer left at the scene but did not state where it was found. The article contained a photograph of the burnt-out caravan and referred to the victim being found stabbed to death in the burning caravan, that she was subject to a frenzied attack and that the dogs were also stabbed. A suspect was mentioned in the article and referred to as 'a prolific burglar who cannot be named for legal reasons'. Agreed fact 135 records that this article was the only press report to mention DC Branagan.

ix) On 10 August 1997 Christopher Dunne spoke to a prison officer and asked to speak to the police. He mentioned the appellant to a prison officer. The officer referred to it being the same day as the news article.

x) On 11 August 1997 he was seen by DC Branagan and DC Cox. Contact sheet number 5 records the first account Christopher Dunne gave of a confession. DC Branagan's notebooks, exhibits SJB/40 and 41, have not survived the passage of time and were lost when a storage facility was flooded. No evidence has been obtained from DC Cox who attended the meeting. Christopher Dunne said he would make a statement if he got bail

or a family visit for a few hours. No offer was made to meet those requests. He was told enquires would be made and a suggestion was made that a letter could be prepared for the sentencing judge in his forthcoming court case. The notes of this meeting and a further meeting on 13 August 1997 are set out more fully below.

xi) Christopher Dunne was seen again on 18 August 1997 by DC Branagan alone. A short note refers to Christopher Dunne making a statement. He was said to be not interested. He was informed that a letter to the judge indicating his assistance could be written. He was told his request for bail was not possible.

xii) On 26 August 1997 he was seen again by DC Branagan. On this occasion his solicitor met with him privately and reported that he did not want to make a statement at that stage.

xiii) On 24 October 1997 Christopher Dunne was sentenced to 6 months imprisonment for the Balti house offence.

xiv) At some time, in late 1997 but before 16 December 1997, the Crown Prosecution Service informed the senior and deputy senior investigating officers that the CPS was proposing to discontinue the case against the appellant because there was no realistic prospect of obtaining a conviction. That was before the police had received the expert evidence that was conclusive concerning the appellant's training shoe leaving a mark on the victim's forehead. That evidence was not provided until 1998.

xv) Christopher Dunne was seen by the police on 16 December 1997 after his release from prison.

xvi) On 18 December 1997 Christopher Dunne signed the witness statement adduced in this case.

xvii) The report from DI Nash recorded the meeting on 16 December 1998 and a meeting on 23 January 1998 when Christopher Dunne was paid. DC Branagan, in her witness statement of 17 March 1998, said that the January 1998 meeting was brief. She was accompanied by DI Nash. She said there had been no further discussions regarding the murder. The note of the meeting on 23 January 1998 refers to a report completed by DI Nash as to the result of the conversation.

xviii) A final meeting took place on 16 February 1998 and drugs were discussed. The information that Christopher Dunne supplied was said to be reliable leading to arrests

and the recovery of drugs. The report noted that he had been paid for some of the information.

Detailed analysis of the witness statement and earlier notes

45. It seems to us that a critical part of the testing and assessment of the reliability of the Dunne statement is a careful consideration of the development of his account. This is apparent in the notes taken by DC Branagan and DC Cox on their visits to Bedford Prison in August 1997 and again in notes taken of a conversation at the police station on 16 December 1997. These notes can be compared with the statement signed on 18 December 1997 and an assessment made of Dunne's consistency.

46. We shall here focus on what was relied upon as a confession to murder. As we have already observed, it is clear that the appellant did give accurate information to Mr Dunne about two of the many burglaries he had committed and that Mr Dunne accurately recollected that information in August 1997. This is relied upon by the prosecution as supporting the reliability of the murder conviction. This is a valid point. There is no need to set out the detail which supports it.

47. The witness statement says that there were two conversations during the period in June while they were sharing a cell in which the appellant said things which show he committed the murder. The content of the notes suggests that they must have occurred towards the end of that period, because they record the time when Dunne stopped sharing a cell with the appellant as soon after the second conversation. Conversation 1 is described in these terms in this statement. The important passage in the second paragraph with the suggested admission is italicised for emphasis by us:-

> "On one occasion PLUMMER and myself had a visit at the same time. His Mum brought his son along, the son looks the spitting image of PLUMMER. After the visit, in our cell, PLUMMER wasn't happy. His Mum hadn't brought him in any gear, he kept going on about his ex-wife how she was going on holiday with her boyfriend and kids and not taking his kid. I gave PLUMMER a joint, which contained the dope I had been saving. He started to smoke it, he was getting very hyper. He said that when his wife left she took the dog with her. He went and got the dog back and gave her a good slapping at the same time. I said jokingly to PLUMMER if he killed my wife I'd do his. He said what's it worth, I told him I'm sure I'd come up with something. Nothing else was mentioned. I went onto tell

> PLUMMER that I'd had loads of drugs busts at my house. (I'd earlier told him I was a drugs dealer, which was untrue.) They had never found anything.
>
> "I told PLUMMER that on one occasion I had a visit from the council, to do with where I was living, it was two women. The following day there was a drugs bust, and the two women weren't from the council, one was a copper Sue BRANAGAN. Upon mentioning the name PLUMMER's face went white, he became very agitated. I went onto say I think she's leading the murder enquiry of some woman who got killed in a caravan. PLUMMER said you might as well know they're investigating me for that. At this stage he was well stoned. I can't recall what I said, but I knew then that my feelings about him were right. I said I ain't going to say anything I'm in enough shit, and showed him my papers. I then laid on my bed pretended to be stoned, he continued rambling on, talking to himself, saying, *"This is how it is, he knows I've killed her, he knows about it, he's with the Police."* I didn't answer him. The incident mentioned about Sue BRANAGAN I made up. I wanted to bring her name into it, because for some reason, what I don't know, I linked him to the murder."

48. As at June 1997 it was true that the police were investigating Plummer for the murder. He had been interviewed about it on 28 and 29 April 1997.

49. Dunne said that he had invented a story about DC Branagan because he had linked the appellant to the murder for reasons he could not explain. He had said that she was leading the enquiry into the murder, which she was not. The appellant would know this because he had been interviewed in April about the murder by DI Nash and DS Sheen. It will be noted that the statement says that the exchange about killing each other's female partners occurred in Conversation1, prior to any admission or other conversation about the murder.

50. Conversation 2 is said to have occurred on the following day. The statement says this:-

> "The same day PLUMMER had a visit I believe from his Mum. *He returned to the cell with some dope*. He got himself stoned again and during the conversation he stated he was going on an I.D. parade. I asked him what for, he said for that murder, the caravan. He went onto say that the parade was down in London. I asked him why it was down there, he said he didn't know. That day I had received a shitty letter from my wife, and I said to him, I don't blame you if you did kill that woman. *He said well between you and me I did, they've got nothing on me*

> *they won't prove it, all they've got is a print of a Nike trainer.* I asked him what happened. He said, *"I was on the way to my sister's, she don't live far away and saw a caravan and some building work being done there, thought there may be some power tools there."* He stated he was going to take some stuff. He thought the caravan was empty no one lived there. *He was in there getting stuff and the woman come. He said she wouldn't fuck off, so I had to finish her.* He said:
>
> "*It was fucking ages before she went quiet, it took her a long time to die."*
>
> I said you want to get rid of all your clothes and that. PLUMMER stated I've already done that, they went in my sister's bin.
>
> PLUMMER stated he took jewellery, *he mentioned a ring which had an initial on it*. He took the initial off it and tried to sell it to someone for pot. The person wouldn't have it but did eventually. *I am sure the ring he mentioned was in relation to coming from the caravan*.
>
> PLUMMER stated that he went to a garage to either get fags or petrol. He didn't say if it was before or after the murder only that 2 people saw him a man and an Indian woman. When I was speaking to him about getting rid of his clothing he stated he got rid of a good pair of jeans and top. During this conversation PLUMMER was hyper, hysterical nearly and shaking. I believed that he had done what he said he'd done. PLUMMER was the only one smoking dope I wasn't. *The next day I went to court nothing was said to me by PLUMMER about the conversation the previous night. I just said - see you later. I believed I would be returning to the same cell. However after court I was moved and did not see PLUMMER for approx. 2 weeks.*"

51. We have highlighted in that extract some words to which we will return. The police had put to the appellant in interview on 29 April 1997 that a footwear mark from his Nike Trainer had been found at the scene of the murder. There is, therefore, nothing probative about his knowing that the police had this evidence by the time of the conversation in the cell in June.

52. We now turn to the notes taken by DC Branagan in Bedford Prison on 11 August and 13 August 1997. In relation to Conversation 1, the record of 11 August says this:-

> "Inf [informant = Dunne] said he had problems with me (DC 960) and that I was working on the murder. He states Plummer froze at this. Plummer started talking

> about trainer and burglaries. Plummer has a habit of saying "see how it is". This occasion he started rambling on to himself. (Inf also pretended to be stoned). He said "See how it is. He knows I fucking done it. He's with the police. Plummer then changed the subject."

53. In relation to Conversation 2, the record of 11 August says that this occurred on the next day after Dunne had been to court and returned to the cell. The note continues:-

> "Upon return from court Plummer was already stoned in the cell. He told Inf that he had to go to an ID parade and was asked what for. Plummer stated "for the murder, the caravan". Plummer asked if he would get picked out if he was a certain distance away and went on about light. The subject then got on to women and Inf said his wife had walked out on him and that he could "fucking kill her" (untrue). Plummer stated "I'll do yours, you do mine".
>
> Inf said to Plummer "You did kill that fucking woman".
>
> Plummer replied "Yeah, I did, but they've got to prove it."
>
> He then went hysterical, and started shaking."

54. The notes put the conversation about killing each other's partners in Conversation 2, while the witness statement has it in Conversation 1. This is unexplained.

55. On 13 August 1997 a further conversation took place between the police and Dunne at Bedford Prison. The note of this is less full and does not purport to capture any of the actual words used by Dunne. It says:-

> "Inf spoken to. States he was told further details by Justin Plummer regarding the murder.
>
> 1) What he was wearing.
>
> 2) What he did with the clothes.
>
> 3) The woman took a long time to die.
>
> He states he knows further things."

56. Dunne was asked to make a statement but declined to do so unless he got bail, or at least a few hours with his family. As we have recorded above, further contacts occurred in August when he was told that this could not be arranged, and that the best he could hope for was a letter which might help him on sentencing. He sought legal advice and no contact occurred between August and December, when, on 16 December, he attended the police station having been sentenced and released from custody. The first note of that day is as follows:-

> " 1) Informant given reward money.
>
> [2)-5) Notes of information given about other offences].
>
> 6) Info re Wilden murder.
>
> Action re 6: Copy of 277 [intelligence report form] to Incident Room."

57. The 277 referred to reads thus:-

- "At time of murder Plummer was going to his sister's
- Plummer knew the house was being built. There was a caravan and there might be some tools.
- Clothing went in his sister's bin.
- Plummer mentioned something about petrol and something to do with a Paki woman.
- Plummer also mentioned the following. Unknown whether to do with murder:-
    - Video
    - Mention of jewellery
    - Ring with an initial on it from a woman. He took the initial off and flogged it.
    - Plummer was wearing jeans and top
    - Never thought she would fucking die

- She wasn't in the caravan when he went in. He didn't think there was anyone there. Thought/after power tools."

58. It would appear that Dunne did not say that he had been told by the appellant that he was going to his sister's prior to the murder at any point in August and first said this on 16 December. He did not say that the appellant had spoken about the Nike trainer until the statement was taken on 18 December.

59. Conversation 2 is the key one, because it contains a clear admission. This was recorded on 11 August as having taken place on a day when Dunne had been to court and returned to his cell. In the statement on 18 December it was said that Dunne had in fact gone to court on the day after Conversation 2 and had not returned to share a cell with the appellant after that. The account of Conversation 2 taking place on the same day as a court appearance is simply omitted from the statement. The admission itself was recorded on 11 August in these words Plummer replied "Yeah, I did, but they've got to prove it". By the time of the statement the words had become "well between you and me I did, they've got nothing on me they won't prove it, all they've got is a print of a Nike trainer." Given that his ability to record precise words and context is important to Dunne's reliability these differences are important.

60. Two further observations should be made:-

i) On 16 December 1997 Dunne received a reward in money on attending the police station. The judge found that he was sure that this was not a payment for making the witness statement which was later read to the jury. However, it is no longer possible to say what it *was* for. The document which would have recorded the precise purpose of the payment is not available. The fact of the payment was part of the defence case at trial, because a statement made in return for payment is likely to be unreliable. The payment will only be made if the police regard the statement as true and useful, and this may well influence the maker in deciding what to say.

ii) The notes made in August record that Dunne then asked for "bail, or at least a few hours with his family" when he disclosed the alleged confession. By the time of the statement this had been massaged into this:-

> "At this stage I didn't want to make a statement, unless I was given bail. The reason for this was it would cause problems for me inside the prison, if it was found out that I had made a statement to the Police. In the end my Solicitor saw me and I told her that I was unable to make a statement and for the Police

> to stop visiting me, as the other inmates were starting to talk about me speaking to the Police. Now, however, that I have completed my time at prison I am in a position to make this statement without fear of any repercussions. It has played on my mind continually and I feel as he is responsible he shouldn't get away with it."

If he had been rewarded, as he hoped, with "a few hours with his family" he would still have been in custody and vulnerable to "repercussions". It was not true that he did not "want to make a statement, unless [he] was given bail". A few hours with his family would have done, it seems.

61. There is no mention in the witness statement of the meetings with the police in August and how his account was relayed to the police over a period of time. That is dealt with in the statement from DC Branagan dated 17 March 1998 and further statements dated 9 July 2021 and 7 January 2022. There is no mention there that at times Dunne asked for favours from the police. There is no mention of his informant relationship with DC Branagan. An application to withhold that information and a PII hearing was discussed at the time however as the trial judge noted any such application would be bound to fail given the issues in the case. In order to call him as a witness, he would have to be "outed" as an informant, at least to some extent. Even if he were anonymised and some of his evidence were heard *in camera* the appellant would know who this witness was.

62. While DC Branagan was able to give evidence about the meetings and the disclosures made the only person who was able to say why, for example, it was only in December 1997 he mentioned the route the appellant had taken and the way in which the victim died could only be answered by Dunne. Because he was not available, and because he had not been asked about this at the first trial, that was not possible. DC Cox was also not available to give evidence.

63. It is not necessary to detail further what is set out in the witness statement other than to note that some facts reported by Dunne were not in dispute for example how the and the appellant came to share a cell and that the appellant was on remand for burglaries and driving while disqualified. He was at the time only a suspect in the murder investigation. Mr Price KC has outlined in argument where it is clear that Christopher Dunne correctly reported things told to him by the appellant that are in fact provable. We have mentioned the two burglaries as examples. It is said that these facts go to support Dunne as a reliable source of information when the murder was said to have been discussed.

64. On behalf of the appellant Ms Thorne KC has taken us to discrepancies and matters that cannot in fact be correct and that accordingly undermine the account given. For example, that Dunne could not have known that DC Branagan was involved in the murder investigation in June 1997 when he said he raised it with the appellant because she and Dunne had not had contact from late 1996. In addition, the suggestion in the statement that she was '*leading the murder enquiry*' was not the case given her relatively junior role. By August 1997 Dunne may have understood that from the news article however by then he and the appellant were not then sharing a cell. In addition, the statement refers to the appellant saying '*all they've got is a print from a Nike trainer'.* There is no note in the contact sheets and reports of the meetings of Dunne saying that he was told that by the appellant.

65. In addition it was only in the meeting on 16 December 1997 that there was reference to the route taken by the appellant at the time to his sisters, that a house was being built, that there was a caravan and might be "power tools", that the clothing went into his sisters bin, he was wearing jeans and a top and that he never thought the victim would die and that he was in the caravan when the victim came in. As was pointed out none of that was said in August at the earlier meetings. Quite why Dunne did not mention those matters earlier cannot be explained.

66. What the alleged confession does not provide is any account of the killing. There is no mention of the dogs, knives or scissors, the cable or flex, stab wounds and the stamp or kick. There is no mention of setting fire to the caravan. It was agreed that the details of what exactly had been done to the deceased had not been released to the public and if the appellant had disclosed any of these accurately to Dunne in June 1997, this would have supported his account. He did not.

67. The appellant when being asked in 2023 about the time when he shared a cell with Dunne in June 1997 said he had not confessed to the murder to Dunne. He would smoke dope in his cells, and this would make him a bit paranoid after a while and make him trust someone less. He accepted that he had approached Dunne and asked to share his cell. Dunne had only just come into the jail and nobody knew him. The appellant wasn't getting on with his cell mate and wanted to move. He couldn't recall speaking to Dunne about his sister. The appellant would offer Dunne cannabis every day and every day he would smoke it. He liked Dunne, but he did not trust him; he could not explain how Dunne knew about the burglary involving the safe other than police officers having told him; this was also the position in relation to other details known by Dunne.

68. DC Branagan's evidence in relation to her relationship with Dunne and how he came to provide a witness largely followed the chronology set out above and the notes of the meetings. In relation to the payment said to have been made on 16 December 1997 she said that after Dunne was

released from prison, he spoke to her at Biggleswade Police Station on 16 December 1997. He had initiated that contact and offered further information regarding the murder. Dunne also provided information in relation to other criminal activities on that date and was provided with reward money. The money was said to be for information that was given about other matters and was not for information or a witness statement in the murder investigation. She said Dunne had not been paid for the witness statement that he had provided on 18 December 1997. As we have said, the contemporary records which would illuminate this are not available.

The factors bearing on reliability

69. The jury were asked to accept the evidence of a deceased witness who alleged that in June 1997 when he shared a cell with the appellant he confessed to the murder. The factors that they had to consider when assessing the reliability and truthfulness of the account were as follows:

i) The accounts of events that can only have come from the appellant. For example the burglaries to which have referred.

ii) That he did describe the scene namely a caravan and that building work was being undertaken.

iii) He described his route, clothes and their disposal, that a car used was either a Metro or a Sierra and that he liked fires and watching them having set fire to haystacks in his youth.

iv) That the victim may indeed have taken a long time to die given the evidence of her injuries.

70. On the other hand the following factors had to be considered to determine whether they weigh against Dunne's reliability and truthfulness namely:

i) Dunne had a large number of convictions including for offences of dishonesty.

ii) He was on remand at the time charged with a number of offences, of which he was later convicted.

iii) He was a police informant who had been paid money for information in the past, and may have hoped for payment for the witness statement even if no offer was ever made.

iv) Records showed that Dunne was paid in December 1997 and January 1998 for giving information and gave more information in February 1998.

v) Dunne cannot have known in June 1997 that DC Branagan was involved in a murder investigation because he had not seen her since late 1996. His account that he mentioned her to elicit a response from the appellant whom he connected with the murder for reasons he did not explain does not make sense.

vi) DC Branagan was not leading the investigation.

vii) The day before he contacted the police in August 1997 a report in the local newspaper did refer to DC Branagan, the investigation and the shoe or footmark issue. Accordingly, did he get the information about the investigation from that source and not from the appellant in June 1997?

viii) There are inconsistences between the statement and the notes of conversations with the police in Bedford Prison:-

a) The contact sheets do not refer to a comment by the appellant about a Nike trainer.

b) Why was it in December 1997 that he reported additional comments said to have been made by the appellant and not before?

c) The actual noted comment in December 1997 was 'never thought she would fucking die' and not 'it was fucking ages before she went quiet, it took a long time to die'.

d) There are other differences between words attributed to the appellant between the versions given in the notes and the statement identified above. Why is this if he had a reliable recollection of what was said?

ix) It was a matter for the jury to decide whether Dunne may have been paid for making the statement. There was a record of a payment made to him in December but it was said to be for other, unspecified, information. Did he appreciate that?

x) By December 1997 had he learnt more from other sources?

xi) The unavailability of DC Cox.

xii) The missing notebooks of DC Branagan.

xiii) None of the above were capable of resolution by asking Dunne because he was not available to give evidence.

71. If the jury was sure that Dunne's evidence was honest and reliable, they still had to consider whether the confession was reliable. In this respect, they knew that both Conversation 1 and Conversation 2 took place when he was heavily intoxicated with cannabis. Apart from that there was no evidence of any reason why the appellant would confess to a murder he had not committed.

The appellant's evidence

72. It is fair to say that the appellant's evidence was not a success. He chose to deny that he had confessed to the burglaries when Dunne, in August, is recorded as recounting a confession with some confirmatory details. He advanced a positive case that the police had fed information about this, and the murder, to Dunne so that it could be included in the statement. His cross-examination was extremely effective and it is highly likely that the jury thought that he had lied to them. His case, and all he could say by way of admissible evidence, was that he had not committed the murder and he had not confessed it, or anything else, to Dunne. He is a career criminal and a serially dishonest man. In attempting to advance theories in evidence he exposed himself to an effective forensic attack. An aspect of that became clear to us after the hearing of the appeal.

73. We asked that the prosecution should provide for us a short summary of its case if Dunne's evidence was excluded. This was designed to help us to test the extent to which Dunne's evidence was the "sole or decisive" evidence, and also to help with the suggestion that we should order a retrial if we quash this conviction on the basis that Dunne's evidence should not have been admitted. This summary of the rest of the case includes reference to evidence from witnesses called Hogan and Richards which was not before the jury at the second trial. We have no reason to suppose that this would be any different at any retrial, and their evidence is clearly irrelevant in assessing whether Dunne's evidence was sole or decisive in the second trial. In addition to the five further points in the summary, we would add the evidence that there is moderate support for the proposition that the footwear marks on the face of the deceased were made by the appellant's right trainer. The five further points in the summary are these:

    i) The evidence of Adam Plummer. The significance of the conversation between Adam Plummer and the appellant's mother after a police search of the house in Wootton, considering details of the *"*Wilden Murder*"*, is that it is submitted the only opportunity for it to have occurred was on 3 April 1997, which is days before even the police had come to suspect the appellant, which did not happen until 18 April 1997, giving rise to an inference, say the prosecution, that the appellant must have confessed his guilt to his

mother, telling her in some detail what he had done. The appellant was cross-examined about this.

ii) The delivery by the appellant of the stolen fishing rod to his sister in Begwary as a gift for her son on one day in late February 1997 and its retrieval for his own son on the next. This is said to be evidence that the appellant did visit his sister's at about the time of the murder and thus was in the relevant area at the relevant time.

iii) The finding of a battery on the floor of the caravan, hours after the appellant had stolen several such items from the burglary in the early hours of the morning of 28 February 1997 of the Wootton Garage.

iv) The finding on the driveway at the scene of the murder of a metallic paint aerosol can, of a kind routinely possessed by the appellant and which, in combination with a lighter he habitually carried, provided a source of fire ignition.

v) Evidence of the seat of a fire in the back garden at the appellant's home in Wootton, where it was submitted he had burned his clothes.

Adam Plummer

74. Adam Plummer is the appellant's brother and made a witness statement dealing with various matters on 18 June 1997. He gave evidence in accordance with it. Among other things, it says:

> "After the Police left I spoke to my mum about the situation with Joe. We spoke about the murder Joe was being questioned about. During this I asked her how he was meant to have killed the woman. She replied that he was supposed to have stabbed her in the neck with a pair of scissors and kicked her in the head. We continued to speak about the situation and that she was fed up with being raised all the time and that she did not think Joe had done it."

75. If this conversation took place after the appellant was interviewed, as the statement says, it has no evidential value at all. If it occurred before that then the fact that she knew unpublished details may generate an inference that the appellant must have told her, and could only have done so if he was the killer. The date is critical. Analysis of the occasions when the police searched the mother's house generated an inference that the conversation must have been before the interviews.

76. This was deployed to effect at the trial. In the cross-examination

Q. Yes. So we can see that the only occasion when the police went to 29 St Mary's Road to search it and Adam and his family were present was the 3rd of April, yes?

A. Right.

Q. Agreed?

A. I think so, yes.

Q. Yes. Right, let me remind you of what Adam told the jury happened no sooner had the police left the house on that day. He told the jury this, "After they left", referring to the police, "I spoke to mother about the murder he was supposed to have done". How could that have happened, Mr Plummer?

A. How do I know?

Q. Well, let me put the question to you in this way. What have you said to your mother that on the 3rd of April 1997 she and your brother should have been having a conversation about a murder that you were supposed to have done?

A. No, I never said anything.

Q. Well, judged from what your brother told the jury, your mother and he seemed to have believed that you were suspected of it on the 3rd of April?

A. On the 3rd of April?

Q. Yes. How could that have happened, Mr Plummer?

A. I don't know.

Q. Even the police didn't suspect you on that day. Why were they talking about you being suspected or possibly involved in a murder on the 3rd of April?

A. Well, you should ask them.

Q. Can you help the jury with that?

A. This guy here should have asked them that.

Q. No, I'm asking you?

A. Well, I haven't got an answer for you, I'm afraid, I'm sorry. I don't know.

Q. "I spoke to mother about the murder he was supposed to have done". And I said,

"Did you ask your mum a question how he was supposed to have killed her?" And he replied,

"Stabbed her in the neck and kicked her in the head". And I asked him, "Did she say what she had been stabbed in the neck with?" And Mr Plummer told the jury, "A pair of scissors".

Can you explain to the jury, please, how such a conversation should have or could have taken place involving your mother on the 3rd of April 1997?

A. This is a conversation, yes, that this guy here, yes, should be having, yes, with my mother, yes, who is dead, yes, or my brother, not me. I don't know.

Q. You see, somehow between the 25th of March and the 3rd of April, it appears that your mother has come to believe that you may have been or may supposed to have been involved in a murder in which someone was stabbed in the neck, kicked in the head and that what she had been stabbed with was a pair of scissors. Now can you help us as to where she got that from?

A. I don't know. I've not got a clue.

Q. I mean, forget the details, can you help us as to why she might have thought that you were supposed to have done it?

A. I don't know.

Q. There's only one possible explanation, Mr Plummer?

A. OK.

Q. It couldn't have come from the police because they didn't first suspect you until the 18th. The only way that that conversation could have happened, I suggest, on the 3rd of April is if you had told her that you had done it?

A. No, I didn't do that, no, I wouldn't.

> Q. You see, in addition to confessing to Christopher Dunne, you confessed to your own mother, didn't you?
>
> A. I didn't confess to Christopher Dunne and I didn't confess to my mother. I didn't do it.
>
> You know it ---

77. In his closing speech, Mr. Price said:-

> If, as undoubtedly they did, Adam Plummer and his mother were discussing the Wilden murder on the 3rd of April as one Adam was being led to believe his brother was supposed to have done, on that date, from whom could his mother have learned of the Wilden mother as one Justin was supposed to have done? It can't have been the police. She can have learned of it from only one person prior to that date. The irresistible inference, we submit, the only inference is that on a date before the 3rd of April 1997, Justin Plummer had confessed to his mother that he had committed the Wilden murder and that is why she is not named in the alibi notice on the 21st of April 1997 as you may recall I put to him in the clearest of terms so that he could have the opportunity to deal with the suggestion.

78. The problem with this evidence is that it is hearsay, and multiple hearsay at that. The prosecution relied on Adam Plummer to give evidence about what his mother said to him, in order to generate an inference that the appellant had made a confession to her. Mrs. Plummer was dead by the time of the second trial and was not able to say what either of her sons had said to her about the murder or when. No statement had ever been taken from her. The fact that the appellant "agreed" the suggestion that the conversation between his brother and mother took place on 3 April is not evidence because he was not there. He was accepting an inference which was put to him based on other evidence which he was not able to give evidence about either.

79. After receiving the summary described in [73] above, we gave rather more attention to this passage of evidence than we had during the hearing and asked the parties for assistance about how it had come to be admitted and whether it was treated as hearsay during the trial. Mr. Price KC responded by making this submission by email:-

> "We submit the evidence of the conversation between him and his mother given by Adam, was plainly not hearsay, as it was not adduced to prove the truth of its content. Its relevance lay, not in the truth of the facts stated [which were in any

> event not in issue], but that such a conversation should have taken place on the date it did [assuming for this purpose it was indeed 03.04.97], This evidence was adduced from Adam [without objection from the defence or intervention by the judge] to prove *the state of knowledge* of the appellant's mother on 03.04.97, so as to then to be able to pose the question, from where had she acquired such knowledge, which on or before that date, could not have been from the police, as she was reported to have said."

80. We were unable to accept that the evidence was not hearsay on this basis. The statutory scheme renders admissible in certain circumstances statements "not made in oral evidence in the proceedings…as evidence of any matter stated", see section 114(1) of the 2003 Act. "Statement" and "matter stated" are defined in section 115.

81. The prosecution sought to prove that the appellant had confessed the murder to his mother. They did this by seeking to prove that she had said something about the murder to her other son at a time when only the killer (outside a circle of confidentiality in the investigation) could have known it. Therefore it must have come from the appellant, by inference in the form of a confession to her of the murder. A confession is a hearsay statement, albeit one which was admissible at common law as an exception preserved by section 118 of the 2003 Act. When the appellant's mother spoke to Adam Plummer, she was making a statement to cause him to believe that the deceased had been killed in a certain way, see section 115(3)(a) of the 2003 Act. This was true, and the evidence only of significance because it was true. What followed from that was an attempt to date the conversation to show that she can only have made that statement, for that purpose, having got the information from the appellant. We do not accept Mr. Price's submission for this reason. Even if he is right, however, and the evidence is not technically multiple hearsay, it clearly suffers from all the same weaknesses that would attract a reasoned admissibility decision, a section 125 re-evaluation and a careful direction about its reliability if it were hearsay within section 121. We return to this below.

82. No hearsay application was made to the judge, who did not consider section 121 to determine admissibility. There was no objection to the admissibility of the evidence. The judge did not consider under section 125 whether the evidence was unconvincing so that any conviction would be unsafe because of it. The judge gave no hearsay direction (or other warning) about it. These are protections against the dangers of unreliable evidence following the relaxing in 2003 of the rule against hearsay. The definition of the type of evidence to which the new regime applies, found in section 115, is not always easy, and we would suggest that in cases of doubt the court

should treat the evidence as hearsay because that will not (as formerly) result in its exclusion, but in its being subjected to a regime which governs its admissibility and treatment within the trial. The availability of these protections should not depend on fine and technical distinctions.

83. This does not give rise to a ground of appeal, but this analysis does serve to illustrate the point that the appellant's evidence was not persuasive, and not all of that was his fault. It also serves to show that the Adam Plummer evidence was not strong and independent support for the Dunne confession.

The appellant's ability to deal with Dunne's evidence in 2023

84. The judge did consider whether the appellant faced an unfair task because he had not been required to consider what evidence he could give about Dunne's statement until the retrial in 2023, 26 years after the event. He recorded that the appellant was first asked to give evidence in detail about Dunne's statement at the trial in 2023. The statement was served before the first trial in the spring 1998, and the appellant's solicitor was informed by the CPS that they no longer intended to rely on the witness on 13 November 1998. The judge held in his ruling on an application to stay the proceedings as an abuse that this meant that:

> "the defendant has had the opportunity to focus upon, and provide his own recollection of, the contents of the statement at a point that was months, rather than years, after the alleged discussions."

That is true, but there was no evidence that the appellant, assisted by his solicitor, had ever availed himself of this opportunity. No privileged material was disclosed.

85. This bears on whether it was fair to admit the hearsay evidence when the reason why Dunne had not himself given evidence while he was alive and been cross-examined at a trial, in which the appellant could also give evidence near the time of the relevant evidence was that the prosecution had changed its mind on whether his evidence was reliable and necessary. Should they have been allowed to change their mind when the consequence of their original decision was to reduce permanently the ability of the appellant to challenge the evidence of Dunne? This is where section 78 of PACE comes in.

The Judge's Approach

The admissibility ruling

86. The judge delivered an exemplary ruling on an application to stay the proceedings as an abuse of process and the application to admit the evidence of Dunne as hearsay evidence. He decided to admit it under section 121 and not to exclude it under either section 126 of the 2003 Act or section 78 of PACE. He summarised the evidence which was expected to be adduced by the prosecution in his abuse of process ruling as follows:-

> 35. As for evidence against the Defendant, the Prosecution rely upon the Defendant's admission that he was carrying out burglaries in other villages only a short distance away from Wilden in the days leading up to the murder, and had burgled two empty and unfinished properties, a dwelling house, and a petrol station, within a few miles of the property, the night before. Many of these burglaries were carried out in daylight hours. On two occasions, the Defendant had closed the blinds or curtains of the properties concerned whilst he carried out the burglaries. The blinds of Ms Cartwright-Gilbert's caravan had been closed and the Prosecution say that this had been done by the murderer. There was no evidence of sexual assault or other motive for the murder and the Prosecution say that the circumstances are consistent with the murder having been committed by a burglar who was disturbed by Ms Cartwright-Gilbert.
>
> 36. The Prosecution also rely upon the fact that the Defendant changed his behaviour after the murder. He stopped his prolific burglary spree and, in the weeks following the murder, he only committed two further burglaries, both at night.
>
> 37. A mark was left on Ms Cartwright-Gilbert's forehead when she was stamped on. This came from a Nike Screech trainer. The Defendant habitually wore a pair of such trainers. The Defendant's trainers were examined by Mr O'Shea, the footwear expert, whose view is that there is moderately strong support for the proposition that the trainer which was used to stamp on Ms Cartwright-Gilbert's forehead was the Defendant's right trainer. Though the Prosecution do not contend that this is conclusive evidence in support of the contention that the Defendant was the murderer, they say that is important evidence. In four of the burglaries in late 1996/early 1997, to which the Defendant pleaded guilty, he left distinctive footmarks behind at the scene. He had been wearing his trainers when he burgled a property on the evening of 27 February 1997. When he was

interviewed by the police, the Defendant lied about how long he had owned the trainers.

38. The Defendant had owned a red Mini Metro car for four months, which he got rid of shortly after the date of the murder. When interviewed by the police, he lied about when he got rid of it and how much he had used it. The Prosecution say that this is suspicious and that one possible explanation is that the Defendant had used the car to travel to Wilden on the day of the murder and was worried that someone might have seen the car and that this would link him to the murder.

39. At the first trial, the Defendant put forward a defence of alibi, which the Prosecution say was false.

40. As for bad character, the Prosecution accepts that there is no evidence that the Defendant was ever violent in the course of a burglary. He was not someone who would seek out a violent confrontation with his victims if disturbed. However, the Prosecution say that there is evidence that he could easily lose his temper when confronted and could become very violent, in a futile or disproportionate way. The Prosecution wishes to rely, in particular, upon evidence of four incidents. The first took place on 29 April 1997, the day on which the Defendant (who was already in custody having been accused of a string of burglaries) was arrested on suspicion of murder. Whilst he was being escorted back to his cell, the Prosecution allege that he ran into another cell, yelled, "I'm not going back to my cell, you cunts", and resisted attempts to return him to his cell, injuring two prison officers. These are the two counts of common assault. The second incident on which the Prosecution wish to rely took place some years earlier, on 24 September 1994. Whilst on remand and under escort, the Defendant attacked the police officer who was accompanying him, gouging his eyes, before escaping. The Defendant was convicted of escape and grievous bodily harm in relation to this incident. The third incident is alleged to have taken place on the day that the Defendant was sentenced for that matter. A prison officer says that he witnessed the Defendant striking a fellow prisoner in the face. The final incident which the Prosecution seeks to rely upon is an allegation by a former girlfriend of the Defendant, Michelle Sneddon, that he assaulted her on 24 July 1994. The alleged dispute was over the care of the Defendant's rottweiler dog. Ms Sneddon says that he lost his temper, smashing the windows in her house, punching her in the

face, and kicking her whilst she was on the ground, causing a cut mouth and four cracked ribs.

41. The Prosecution also rely on a number of alleged confessions or incriminating statements that the Defendant is alleged to have made to fellow prisoners whilst he was in custody. Stephen Dean made a statement that on 10 August 1997 the Defendant said, referring to Ms Cartwright-Gilbert's murder, that "I didn't do the murder. I was near there but I didn't do it." This was in contrast to what the Defendant had told the police in interview, which was that he was at home in Wootton, some 13 miles away from Wilden, at the time of the murder. A second prisoner, Antony Hogan, said that the Defendant made a number of incriminating statements and that when Mr Hogan asked the Defendant if he had done the murder, the Defendant indicated that he had by nodding rather than speaking, and added, "the bitch probably deserved it." A third prisoner, Gary Richards, has said that the Defendant made incriminating statements. Also, Mr Dunne gave a police statement on 18 December 1997. He said that the Defendant had asked to share a cell with him, perhaps because Mr Dunne did not take drugs and so the Defendant would not have to share his drugs with him. Mr Dunne said that the Defendant was a regular smoker of cannabis and that this made him indiscreet. The Prosecution say that they have video footage from the prison dated 15 October 1998 which shows the Defendant's mother passing him drugs, which they seek permission to adduce by way of third party bad character evidence. Mr Dunne said that on one occasion, whilst the Defendant was under the influence of cannabis, he muttered to himself, referring to Mr Dunne, "he knows I've killed her, he's with the police." Shortly afterwards, the Defendant checked Mr Dunne's clothing for recording equipment. Mr Dunne said that the Defendant also described some of the burglaries that he had committed. On another occasion, according to Mr Dunne, the Defendant gave him a description of the burglary of Ms Cartwright-Gilbert's caravan, saying that he had thought that it was empty. Mr Dunne said, in reference to the Defendant's description of the murder:

> "He said she wouldn't fuck off, so I had to finish her. He said, "It was fucking ages before she went quiet, it took her a long time to die."

87. In summarising the case for the defence at that stage, the judge observed, among other things, that "none of the property taken from the caravan was recovered from the Defendant's home".

That is a reference to, among other things, a sander machine which the prosecution alleged had been stolen by the burglar/murderer. It was not recovered, but the fact that it was stolen supported the prosecution case that the murderer was present as a burglar, which supported the case against the appellant. This machine featured prominently in the trial until it was discovered from close examination of a photograph taken after the murder that it was still on site, and had not been stolen at all. This discovery was made during the summing up.

88. The judge cited the decision of the Court of Appeal in *R v Riat* [2012] EWCA Crim 1509; [2013] 1 Cr. App. R. 2 quite extensively and said this:-

> "28. It is clear that hearsay evidence need not be proved, by other evidence to be reliable before it is admitted. At paragraphs 6 and 8 of its judgment [in *Riat*], the Court said:
>
> '6. The true position is that in working through the statutory framework in a hearsay case (below), the court is concerned at several stages with both: (i) the extent of the risk of unreliability; and (ii) the extent to which the reliability of the evidence can safely be tested and assessed….
>
> 8. Although there is no rule to the effect that where the hearsay evidence is the "sole or decisive" evidence in the case it can never be admitted, the importance of the evidence to the case against the accused is central to these various decisions.'"

89. He then found as follows:

> 41. As the Court of Appeal said in **Riat**, a useful framework for this analysis consists of the factors on 114(2) of the Act. I will consider them in turn.
>
> (a) **how much probative value the statement has (assuming it to be true) in relation to a matter in issue in the proceedings, or how valuable it is for the understanding of other evidence in the case**.
>
> 42. The high probative value of the evidence, if true, is obvious: it is evidence of a confession to the crime of murder.
>
> **(b)what other evidence has been, or can be, given on the matter or evidence mentioned in paragraph (a)**

> 43. There is no other evidence that can be given in relation to this cell confession. There was no other witness to it. There is other evidence in support of the Prosecution's case that it was the Defendant who murdered Ms Cartwright-Gilbert. I have described this evidence in the abuse of process ruling. It includes the footmark evidence, though there is, at best, only moderately strong support for the proposition that the training shoe that made the mark on Ms Cartwright-Gilbert's forehead was the Defendant's. There is also evidence that Ms Cartwright-Gilbert was murdered in a burglary gone wrong, and that the Defendant was committing burglaries in the vicinity of Ms Cartwright-Gilbert's home in the days and nights before the murder. There is circumstantial evidence, including that the murderer might have closed the blinds in Ms Cartwright-Gilbert's caravan, and that the Defendant closed curtains or blinds in two other properties that he burgled. There is other cell evidence, from Mr Hogan, about another cell confession, and from Mr Dean.
>
> 44. In these circumstances, I reject the suggestion in the Defence written submissions that this is "sole and decisive" hearsay. In any event, as *Riat* and other authorities (eg *R v Spraggon* [2002] EWCA Crim 128) make clear, even if hearsay evidence is potentially sole and decisive, that does not necessarily mean that it should be excluded.
>
> **(c) how important the matter or evidence mentioned in paragraph (a) is in the context of the case as a whole**.
>
> 45. Notwithstanding the other evidence against the Defendant, this is potentially important evidence, if it is accepted by the jury. It would mean that the Defendant admitted committing the murder.

90. The evidence of Mr. Hogan did not go before the jury and the evidence of Mr Dean was that in a conversation in a cell in August 1997 the appellant had said that he did not do the murder, but that he was near there but did not do it. His evidence was that he was at home, 13 miles away. It is hard to describe either of these pieces of evidence as having had any significant impact on the case, whatever may have been anticipated at the admissibility stage.

The application of section 125 of the Criminal Justice Act 2003

91. The judge, having admitted the hearsay evidence of Dunne, and, we might add, Adam Plummer, did not carry out the required assessment in section 125. Had he done so, he might have revisited

the supposed supporting evidence and would, we think, have been driven to the conclusion that the confession was the decisive evidence on which the prosecution could rely in order to prove its case. We have not heard argument directed to the sufficiency of the other evidence, but it is clear that in its absence there was no evidence on which the jury could convict, or, at least, that such other evidence as there was, was tenuous and weak[2]. We refer to the summary of the other evidence we describe at [73] above, and the judge's summary of the evidence for the purposes of the abuse ruling at [84]. At the section 125 stage, just before speeches, the judge would have been able to see whether the direction which he proposed to give provided the jury with an understanding of the importance of the confession to the outcome of the case and of the various ways in which they could assess its reliability. He would have had to ask himself whether it was unconvincing with the result, given its importance to the case against the defendant, that any conviction would be unsafe.

92. The evidence as adduced at trial was not the same as that anticipated when the admissibility decision had been made. Mr. Dean, Mr. Hogan, and Mr. Richards to whom the judge then referred were either quite neutral (Dean) or, for various reasons, absent (Hogan and Richards). The evidence about the sander was the clearest evidence that something had been stolen and tied in with Dunne's evidence that the appellant had talked to him about seeking "power tools". This evidence disappeared entirely, as we have explained. The evidence of Adam Plummer, or at least the use to which it was put, had not been anticipated at the admissibility stage but was, for the reasons we have given, a cause of significant concern. All of this would have required attention when considering the impact of section 125 at the close of the evidence. The suggestion that the sander had been stolen, because of mistaken evidence which had been adduced by the prosecution, had not been shown to be wrong by that stage, but did require attention once its true status was identified.

The judge's directions

93. The direction given by the judge about hearsay in the legal directions was in these terms:

> "The evidence of Mr Dunne. Christopher Dunne provided a witness statement to the police on the 18th of December 1997 in which he said that while he and Mr Plummer were sharing a cell in Bedford Prison, in about June 1997, and whilst Mr Plummer was under the influence of cannabis, Mr Plummer confessed to the murder. Mr Plummer denied that he confessed to the murder. Mr Plummer says

[2] We deal with a piece of evidence not mentioned at the stage of the abuse ruling, namely that of Adam Plummer, at 74ff above. It might amount to a case to answer, at least in theory. We deal further with it below at [108].

that Mr Dunne's account of what he said to him, whilst they were sharing a cell together is untrue and was invented.

You must first decide whether you are sure that Mr Plummer did say this to Mr Dunne, taking account of all the evidence which bears on this point, namely the evidence of Mr Dunne, the evidence of Ms Miller, formerly DC Branagan, the evidence of Mr Plummer and the evidence of how far information about the murder circulating amongst the public and amongst prisoners in Bedford Prison. In relation to Mr Dunne's evidence, there is a further important consideration. This is that his evidence takes the form of a witness statement that he made on 18th December 1997, and which was read to you. He was not available to give evidence in the witness box because he has since died.

The defence does not accept that Mr Dunne's evidence is true, and would have wished to have cross-examined him, if he was still alive. You must decide what weight, if any, you give to the evidence of Mr Dunne, and when you're doing so, you must bear in mind that this evidence has a number of limitations. First, although Mr Dunne signed a formal declaration at the beginning of the statement, that it was true and that he knew that he could be prosecuted if he deliberately put something into the statement that was false, his statement was not made under oath or affirmation.

Secondly, if Mr Dunne had given evidence in court, he could've been cross-examined, and you do not know how Mr Dunne and Mr Dunne's evidence would have stood up to that. There is a further relevant matter, you were told that Mr. Dunne had a number of convictions, these are summarised in the agreed facts at paragraph 69. Most of these were offences of violence, or driving offences, but they include offences of dishonesty. The defence say that these convictions make it more likely that Mr Dunne was not telling the truth in his statement. These convictions are something which you should take into account when evaluating Mr Dunn's evidence, it is for you to decide how much weight to give them. Unless you are sure that Mr Plummer did say what Mr Dunne said in his statement that he said, you must taken no account of it at all. If, on the other hand, you are sure that Mr Plummer did say it, then you must go on to decide whether it was true. If you are sure it is true, then you can rely upon it. If you are not sure it is true, then you must ignore it altogether."

94. This, it may be said, is quite generic. It does not tell the jury that the whole case depended on whether they accepted that the appellant had made the confession to Dunne. This was not the view the judge had taken when deciding to admit the confession evidence but in our judgment it had clearly become true by the time the judge gave the jury the directions. Neither does it, for example, say that the jury should decide whether Mr Dunne may have been seeking some benefit by making his disclosures, and if so, whether that may have affected his reliability. The direction does not suggest that a comparison of the notes with the statement should be carried out in order to assess the reliability of the statement. The direction does not in detail address the ways in which the jury can test and assess the evidence (given that it is not demonstrably reliable) and what material may have existed for that purpose which may not now exist. There had been a direction about the relevance of delay in the case generally, but this did not address the evidence of Mr Dunne in particular.

95. The way in which the judge dealt with these issues was to sum up the facts relating to Mr Dunne's evidence with care and in some detail. He did this by summarising the relevant evidence, and the points made by the prosecution and the defence about why it was, or was not, reliable. This did capture the relevant material, but was not phrased as a judicial direction as to the proper approach to this evidence, and the relevant matters which the jury should consider. In particular, the judge did not indicate at this stage either that the decision the jury made about the evidence of Dunne was critical to the outcome of the case.

96. The Crown Court Compendium 2025 at 14-16 provides guidance with the legal direction required in such cases. The Compendium warns of the greater risk of unreliability in such cases stating 'it will be incumbent on the judge to give a very clear jury warning about the enhanced dangers. The jury will need to be directed about each link in the chain of hearsay'. The Compendium is not a source of law, but does contain sound advice to judges which seeks to reflect the law and we consider that a warning of this kind is required in a case where multiple hearsay is the decisive evidence against a defendant.

97. What the legal direction did not do was;

    i) Direct the jury to exercise caution when considering the evidence because it was hearsay and that such evidence by its very nature can be unreliable. In this case the reports of the conversations were made weeks and months after the events alleged.

ii) Direct them to exercise caution because the reliability of cell confessions in particular may be tainted by any number of factors, to gain an advantage or benefit from the police or prison service or over some other prisoner.

iii) Identify the factors in favour and against the reliability of the confession evidence. In other words, the factors relied upon by the prosecution that supported the account given and the factors that did not. This should include reference to the passage of time and the loss of relevant materials.

98. The principal matters, which the jury had to consider in assessing or testing Dunne's reliability, were:

i) He was a police informant at the time and had been paid for information before and after December 1997.

ii) When he gave his accounts to DC Branagan he asked for favours namely bail or a few hours with his family.

iii) Dunne refused to make a statement in August 1997.

iv) The account was given to the police over a number of meetings in August 1997 and in December 1997. Differences in the words attributed to the appellant can be seen, and important details were missing from the August accounts and appeared only in December.

v) Identify his convictions for offences of dishonesty recorded against Christopher Dunne namely burglary, theft, making off without payment and taking a vehicle without consent.

99. Certain matters affecting the appellant were also relevant:

i) He was said to be very intoxicated at all times when he was alleged to have spoken about the murder.

ii) He had not been questioned or asked about the Dunne account until 2023. He was therefore being asked by the police for the first time about events many years before. He may perhaps have been asked about it by his solicitors in 1998, but there was no evidence of that.

iii) If Dunne had or may have first obtained the information about DC Branagan being involved in the murder investigation from the newspaper on 10 August 1997 the conversation cannot have occurred in June 1997 as he alleged.

iv) They should look to see whether Dunne recorded the appellant as having told him things which only the murderer could know. Anything which had been published in the media by August 1997 was not in that category.

Analysis and conclusions

100. The issues for us are:-

i) Whether the statement was properly admitted.

ii) Whether the case should have been stopped under section 125 of the 2003 Act.

iii) Whether the directions of the judge in summing the case up to the jury sufficiently assisted the jury to evaluate the hearsay evidence so that their verdict should be found to be safe.

101. We have concluded that this case should have been stopped under section 125 of the 2003 Act at the conclusion of the evidence. The judge's failure to do that clearly therefore renders the conviction unsafe. We do not criticise the judge for failing to address this question, because he was not asked to do so. It was only after this trial that this court in *BOB* construed section 125 as placing a duty on the court to determine the questions raised in section 125 in such a case, even if no party raises the question.

102. In these circumstances it is not necessary for us to decide whether it was wrong to admit the evidence in the first place, or whether the observations we have made about the judge's directions, were, on their own, such as to render the conviction unsafe.

103. Dunne was a criminal and paid police informant who was in the habit of passing information to the police about other criminals for his own benefit. In June 1997 he found himself sharing a cell with the appellant, who had been interviewed as a suspect for this murder in April. Dunne did not tell anyone that the appellant had confessed murder to him until he spoke to the police in August. In August, in the hope getting bail or a few hours with his family, Dunne told the police that the appellant had confessed two burglaries and given him details of those offences which turned out to be accurate. The appellant had indeed committed those offences, and it was reasonable to accept that Dunne's evidence of these confessions was true and reliable. However,

the circumstances of the suggested confession to murder and the reliability of the informant are such as to raise concerns about it.

104. In August he gave no detail of the murder which could support its reliability. He also declined to make a statement. Some further information was forthcoming at the discussion on 16 December and the witness statement taken on 18 December added some further material. It remained the position that there was no "smoking gun" even by that stage, by which we mean an accurate detail which no-one but the killer could know. There were also differences between the accounts of the two conversations given in August and December which are objectively a cause for concern about their reliability.

105. The importance of Dunne's evidence to the case against the appellant was very high. We have held at [88] that without it there was no case for him to answer, or at least that the case on that basis was very weak. It was the decisive evidence. The witness, Dunne, was dead and could not be cross-examined and never had been. It is not only the lack of cross-examination which matters: he had never been examined in chief either, when his account would have been elicited without leading questions. The admission of his witness statement assumes that, if called, he would have come up to proof. There is no reason to make this assumption. Had he given evidence during his life, the trial process, with examination in chief and cross-examination, the outcome is actually very unpredictable. Confession evidence of this kind is not unknown and experience suggests that it sometimes fares quite well, and sometimes comes apart at the seams. The fact that Dunne would have been required to accept he was a police informant, and may have been reluctant to do so, is a further area of concern when assessing the extent to which the admission of this evidence by reading the witness statement created an entirely different impression from that which would have resulted from live evidence. His identity might have been protected from the world at large, but not from the appellant who knew who he had shared a cell with in June 1997.

106. The passage of time between the taking of the statement on 18 December 1997 and the trial in 2023 is also highly relevant. The evidence in it is rendered less convincing because documents which might have shed light on the circumstances in which, and reasons for which, it was taken are missing. Oral evidence on these matters is 26 years old. This affects both the police witnesses and the appellant. If the appellant's solicitors in 1998 had taken a detailed proof from him about Dunne's evidence the disadvantage to him would have been reduced, if that proof were still available, but there was no evidence that this had happened. There was an opportunity for it to happen, but this is not quite the same thing. These disadvantages were directly caused by the

decision of the CPS in 1998 that the witness should not be called at the first trial. This is a factor which falls for consideration under section 78 of PACE, rather than under section 125. We have decided to dispose of this appeal on the assumption that the evidence was properly admitted, so we do not need to say anything more about this change of position, except that the comparison with what would otherwise have happened at the first trial and what actually happened at the second trial demonstrates that the decision, and the passage of time shows how unconvincing this untested evidence was by 2023.

107. As *BOB* decides, the section 125 issue is best decided at a point when a judge can assess the safety of any conviction in the light of the tailored direction which will be given to the jury if the evidence remains before them. For the reasons we have already given, we do not think that the directions which the judge gave to this jury were enough to ensure that the conviction is safe notwithstanding the unconvincing nature of the evidence of Dunne and its importance to the case against the appellant.

108. This conclusion is reinforced by the treatment of the evidence of Adam Plummer which was relied upon at trial, and on this appeal, as evidence of another confession by the appellant, this time to his mother. The treatment of this evidence at trial was not satisfactory for the reasons we have explained. If the inference was drawn by the jury that they were sure that this confession was made, it was a sufficient basis for conviction. No statement had ever been made by the person to whom the confession was allegedly made and she was dead by the time of the trial and unable to explain whether she had said what Adam Plummer recalled and, if so, when she had said that and where she got the information about the killing which she passed on to him. The conversation only had any evidential significance if Adam Plummer was right in saying not only what was said but also in identifying the occasion when it was said. The absence of the mother's account of these matters renders the evidence unconvincing. The absence of any hearsay direction about it means that the jury was never warned about the dangers of relying on it. It was deployed to great effect in cross-examination and in the prosecution closing speech and the evidence was fully summed up by the judge. The jury asked some questions about Adam Plummer's evidence and it may be that it played a significant role in their decision. In these circumstances a judge reflecting on the matter under section 125 would have been driven, in our judgment, to find that it may render a conviction unsafe. There is no ground of appeal is before us on this question.

109. There may be no logical connection between the two alleged confessions, but they were deployed together in Mr. Price's questioning of the appellant set out above:

"You see, in addition to confessing to Christopher Dunn, you confessed to your own mother, didn't you?"

Decision

110. For those reasons we consider that this conviction is unsafe because the Dunne hearsay evidence should have been withdrawn from the jury even if, which we have not decided, it was properly admitted in the first place. For the reasons we have explained, the Adam Plummer evidence does not support the Dunne evidence, but rather gives rise to further serious concerns. Accordingly this conviction is quashed.