In the Bristol Crown Court **T2011/7126**

Hearing date: 9 May 2012

Regina

V

CHRISTOPHER JOHN HALLIWELL

RULING ON PRELIMINARY ISSUES: ABUSE OF PROCESS

Introduction

1. This defendant was originally charged on two counts of murder in an indictment before Bristol Crown Court. Before he was arraigned the Court heard two applications made on his behalf.

2. First, there was an application to exclude the evidence contained in the witness statement of the Senior Investigating Officer (SIO) Detective Superintendent Fulcher, together with associated evidence said to be tainted by the activities of that officer. This evidence related to the period from the moment of the defendant's removal from his place of arrest, at 11:06am on 24 March 2011, until his arrival at the police station four hours later at 15:15 hours. The basis of this application was that the documents revealed such substantial and irretrievable breaches of PACE and the applicable Codes that the evidence was rendered inadmissible.

3. On 4 February 2012, after a four-day hearing on a voire dire and for the reasons subsequently sent to the parties in writing, I granted that application. In respect of Count 2 on the indictment, charging the defendant with the murder of Becky Godden-Edwards, that amounted to a terminating ruling. The Crown did not appeal.

4. There was then a further application for the trial on this indictment to be stayed as an abuse of the process. In summary, the basis for this application was that, after the defendant's arrest, the SIO had called a series of press conferences and briefed the press in detail on what the defendant had told the police and how he had led them to separate locations where two bodies could be found. There was then extensive and repeated national media coverage of the case and of these facts in particular, over a number of weeks, such that it is no longer possible to rectify the damage caused by this publicity and the defendant could not have a fair trial.

5. I heard some preliminary submissions on this matter immediately after my ruling on the first; and I subsequently gave directions for the hearing. I heard full argument on 4 April 2012 and reserved judgment in order to consider the substantial volume of documentation submitted by the defendant, based on the media coverage of this case.

6. At a hearing on 9 May 2012 I dismissed the application and agreed to send full reasons to the parties in writing. These are the reasons for my decision on that application.

7. Subsequently, at the PCMH held at Preston Crown Court on 31 May, the Defence applied to dismiss Count 2, the Crown did not resist the applications and Count 2 was deleted from the indictment. The defendant was arraigned on Count 1 and pleaded not guilty. His trial on that Count is now fixed to be heard at Preston, the case having now been transferred from Bristol Crown Court, commencing on 25 February 2013, with a provisional time estimate of two weeks. The case will be listed for further case management directions after the parties have had an opportunity to consider these written reasons and it was agreed that no Defence Statement need be served until then.

8. For convenience, because the two applications are linked and the SIO gave evidence at the voire dire which is relevant to the second application, I am attaching as an Appendix to these reasons the first ruling on admissibility, so that the issues on the second application and the context in which they arise may be properly understood.

9. The background facts are set out in full in that first ruling, which may helpfully be read first, and I do not therefore repeat them here.

ABUSE OF PROCESS

The Relevant Facts

10. In his evidence at the voire dire DSupt Fulcher described the media strategy adopted from the start of Operation Mayan. The strategy

incorporated public engagement, regular liaison with the media and the use of posters and flyers and an on-line social media response.

11. Before the defendant's arrest on 24 March 2011, DSupt Fulcher approved media releases each day between 19 and 24 March, appealing for witnesses and providing or updating information to members of the public about Sian and about the searches being carried out. He held a press conference on 21 March, widely attended by TV, radio and print media personnel.

12. This decision to engage the media became an important element of the tactics adopted by the police to try and encourage the defendant to return, under surveillance, to wherever Sian had been taken. The strategy resulted both in an unprecedented response from members of the public, many thousands helping in the search, and a substantial amount of media attention. By the time of the defendant's arrest, although the plan to encourage him to return to Sian's location had not worked, the circumstances of Sian's disappearance and the hunt to find her had attracted considerable publicity, both online and in the local and national print media.

13. After his arrest and the events which led to the first application to exclude the evidence relating to them, the defendant was then returned to the police station. He was immediately allowed access to a solicitor who attended and was present at the interviews, all of which were conducted under caution. DSupt Fulcher provided for the solicitor, by

way of partial disclosure, a summary of the earlier interviews he had carried out with the defendant.

14. On legal advice the defendant exercised his right to make no comment in answer to all the questions asked of him. DSupt Fulcher said in evidence that it had not occurred to him, after all the defendant had said to him earlier, that he would now "refuse to offer any further comment".

15. At the very end of the earlier interviews, before the defendant was returned to the police station, the defendant had said that he did not want to repeat to others what he had told DSupt Fulcher. He was told that he would have to, but the defendant expressed concerns about the affects of all this on his children. DSupt Fulcher said that he would make arrangements to move his family out of the area, so that they might avoid the harmful effects of publicity concerning the case. Such arrangements were indeed made and implemented. However, the defendant stayed silent in interview and, much to the officer's annoyance I have no doubt, did not repeat in interview under caution the matters he had earlier relayed to him.

16. In his witness statement, adopted as his evidence in chief at the voire dire, DSupt Fulcher said that he was aware that members of the public had videoed the defendant's arrest in the car park on their mobile phones and had rapidly posted the footage on to social media sites. Various media outlets were seeking clarification as to who had been

arrested and why. A holding statement was issued whilst he was on his own with the defendant and before returning him to the police station.

17. At 17:00 hours on the evening of the defendant's arrest, 24 March, DSupt Fulcher conducted a televised press conference, the contents of which he said had been sanctioned by the Gold Group. By that time the police had found what they believed to be Sian's body. In his evidence in chief DSupt Fulcher stated that he told the press that a 47 year old man from Swindon was in custody, having been arrested on suspicion of kidnap and two murders; and that he had been taken to the location of two bodies, neither of which had been identified, but one of which was believed to be that of Sian.

18. In cross-examination relating to this press conference and further conferences which took place over the following days, DSupt Fulcher made a number of frank admissions. He accepted that he had told the press at this press conference not only that a 47 year old man had been arrested, but also that it was that man who had led him to one body and to the location of another, thereby informing them as to what the man under arrest had told him.

19. He admitted that he had just assumed the defendant would continue to talk to the interviewing officers and tell them what he had earlier told him, so that the details would all be subsumed within the interviews under caution. He expressed surprise that the defendant was advised to make no comment and expressed the view that the defendant would

have been best advised to explain the circumstances and to mitigate. He accepted that he was both annoyed and frustrated by the defendant's silence in interview. He expressed the view that he had received "foolish legal advice".

20. Further, although he expressed the view that the public had a right to know what the police had been doing, he admitted when cross-examined that at the time he had not thought through the implications of giving the media all that information. Whilst he had not expressly revealed the identity of the arrested man he accepted that, by the evening of 24 March, the media had worked it out for themselves, given the circumstances of the defendant's arrest in a busy car park, in the presence of members of the public, and the pictures taken of that arrest being posted on YouTube within a very short time. Certainly, the defendant was named in the media as the man under arrest almost immediately.

21. DSupt Fulcher provided details of the further press briefings. At 10:30 hours on Friday 25 March he held another press conference, the contents of which were once again defined and sanctioned by the Gold Group. His explanation was that there had been huge media interest, with some inaccurate reporting, and he considered it essential to allay public disquiet by providing sufficient detail of what had occurred and what the police knew at that point in time. He therefore explained his knowledge of Sian's abduction and outlined in broad terms the investigative approach that he had taken. Once again he included in

this briefing the fact that the man who had been arrested had taken him to two separate locations where bodies were to be found. DSupt Fulcher said that he had very little information about the second victim at that stage. He stated, "it was incumbent on me to address legitimate public concerns".

22. On Saturday 26 March, the officer held a further, televised press conference at 15:00 hours, providing a formal briefing agreed once more through the Gold Group for media release, in which he included details of what the defendant had told him regarding the second body. He stated that he did this because media speculation based on coverage without this clarification had resulted in more than 600 calls to the major incident room from concerned relatives of missing people. He stated that he considered it entirely appropriate for him to provide such clarity as he could to allay people's fears and minimise their false hopes.

23. On Sunday 27 March the defendant was charged with the murder of Sian O'Callaghan. At 10:42 on that day DSupt Fulcher sanctioned a joint media release from the Crown Prosecution Service and Wiltshire Police stating that the defendant had been charged with Sian's murder. At 12:46 hours that day he released information concerning the estimated age of the second person whose body had been found. He also repeated the information given to him by the defendant, that the victim was a young woman taken from the Swindon area between 2003 and 2005. He gave his reason for doing so as wanting to provide

accurate information to potentially bereaved parties and to enable witnesses to recognise that they may have relevant information.

24. Applications to extend the period of the defendant's detention had been made at the Magistrates' Court on 25 and 26 March. On 26 March no members of the press were present at the hearing, at which the defendant was legally represented. DSupt Fulcher admitted that, when he gave evidence, he stated that the defendant's failure to answer questions in interview meant that the police could not progress the investigation. He also referred to his agreement to move the defendant's partner and children out of the area to avoid media attention. He accepted that he had suggested that the defendant's failure to answer questions was the result of the solicitor's involvement in the case and that he considered that the solicitor's advice was frustrating the investigation.

25. Mr Latham suggested that he was deliberately trying to influence the defendant from the witness box and to undermine the legal advice he was receiving. The officer stated that he had said this out of sheer frustration at what was happening. Having heard all the evidence I accept that explanation. I reject the suggestion of a more sinister motive for his conduct.

26. Nine days later, on 5 April, the officer conducted a further press conference, the contents of which were once again sanctioned by the head of Corporate Communications and the Gold Group, and which

related to the identity of the second victim and her background.

27. In the week following this press conference media releases consisted of information relating to Sian's funeral and a repetition of information concerning Sian and the other victim Becky Godden-Edwards. An entry in the Incident Policy Book for 9 April acknowledged that, since the defendant had been charged with the murder of Sian O'Callaghan, the "matter is sub judice".

28. On 23 May 2011, DSupt Fulcher sanctioned a final media release, indicating that the defendant had been charged that day with the murder of Ms Godden-Edwards.

29. In addition to the oral evidence of DSupt Fulcher, and before the hearing of this application on 4 April 2012, the defendant's representatives analysed in considerable detail the contents of the police press releases and conferences, and of the publicity given to them, in order to reveal the extent of the factual information which had been provided to the media and placed in the public arena after the defendant's arrest. This was produced as a list of bullet points and a detailed schedule of printed material, identifying the date of each item of information, the relevant newspaper and the source of the information. The schedule covered a period between 21 March and 25 April 2011 and the list ran from 19 March - 23 May 2011.

30. For the majority of this information the source was shown to be DSupt

Fulcher. In some cases, on 26 and 28 March, the source is identified only as a "police source" or, more often, just "a source". Mr Latham's submission, and there really is no dispute about it, is that most of the material is referred to as fact and all of it must have come from the police, most probably from DSupt Fulcher.

31. In The Mirror on Sunday for 27 March the following statement appeared, provided by the Crown Prosecution Service:

> "*Simon Brenchley, District Crown Prosecutor for the CPS in Wiltshire, said: I have been working closely with Wiltshire Police and have now authorised them to charge Christopher Halliwell with Sian O'Callaghan's murder. I must remind the media to take care in reporting events surrounding this case. Mr Halliwell has been charged with a serious offence and is entitled to a fair trial. It is extremely important that nothing should be reported which could prejudice a fair trial. I will keep liaising closely with the police as their investigation continues.*"

32. I have considered all this material carefully, together with the original copy newspapers submitted for me to read. The bullet point list of facts provided to the press after the defendant's arrest is not in dispute and is as follows:

"• Halliwell had taken the police to the two bodies

• He had admitted killing the two women

• Some time after her death he had moved Sian to the eventual deposition site

• He gave details of the dates and circumstances of the killing of Godden-Edwards

- He was very specific about the site
- That she had been taken from the Swindon area in 2003 – 2005
- She was a ‘vice girl’
- Sian had been caught on camera jumping into the taxi of the man arrested
- Halliwell had a very large quantity of paracetamol on him at the time of his arrest
- He had been under surveillance and followed for the two days prior to his arrest
- He had been seen to light a bonfire and the police had had difficulty in staying close enough to keep him under surveillance
- He had been followed to Heathrow
- On the way he had made a mobile telephone call
- Under cover officers were so close to him that they overheard him recount that he had been questioned over Sian’s disappearance
- When arrested Halliwell had said: ‘How did you catch me? Was it the gamekeeper?’
- After his arrival at the police station, Halliwell had stopped talking to the police”

The Defence Submissions

33. Mr Latham submits that what happened here constitutes an abuse of process in two respects. There was, he submits, an assault on the

integrity of the criminal justice system as a result of the deliberate misconduct of the police in briefing the media on what the arrested man had told them. That alone merits a stay of the proceedings. Further, the nature and extent of what was done also means that it is now impossible for this defendant to have a fair trial.

34. He submits that the evidence in this case demonstrates bad faith, or at best "serious fault" by the Police and the Crown Prosecution Service. What may have begun with a degree of innocence is said to have developed into conduct amounting to bad faith over the course of 24 hours following the defendant's arrest; and it resulted in a striking contempt of the rules relating to sub judice material.

35. Even if the Court were not satisfied as to bad faith, there was clearly serious and continuing fault here. For the reasons given in the ruling on admissibility there were also found to have been wholesale and irretrievable breaches of PACE and the Codes, together with the possibility of oppression, in circumstances deliberately designed by DSupt Fulcher to persuade this defendant to speak when he did not wish to; and to ensure that the protections to which he was entitled in law were not afforded to him.

36. This misconduct was then followed by a cynical and deliberate policy of "drip-feeding" to the national media, from the first press conference on 24 March to the identity of the second body some days later, a whole series of sub judice facts arising from the police investigation, many of

which cannot now be given in evidence at trial, as a result of the first ruling, and which the public had no right to know. The SIO knew the restrictions and his professional obligation and yet he deliberately broke the rules. Only after strenuous objections about the reporting were made by the Defence did the Crown Prosecution Service issue statements to the press urging restraint, to prevent prejudicial publicity. This, however, came far too late.

37. After the defendant's arrest Mr Latham submits that the shutters should have come down. Instead, in a series of announcements to the media, scripted in advance, DSupt Fulcher deliberately placed in the public arena information now ruled inadmissible and when the matter was sub judice. This was wholly improper and unjustified conduct by a senior officer which is, in Mr Latham's submission, without precedent.

38. Drawing a distinction between what happened here and justifiable appeals for public assistance and the supply of information in anodyne terms as to a man's arrest and the recovery of a body, to which there can be no objection, Mr Latham submitted that DSupt Fulcher deliberately briefed the media on evidence that made out the case against this defendant. The media were given specific information on which the police were intending to rely as part of the Prosecution case.

39. He emphasises that the problem here has been created by the Prosecution, not by the media. This is not a case involving inaccurate, speculative or misleading reporting or ill-informed and extravagant

comment by the media, which can be addressed by appropriate judicial direction in strong terms. On the contrary, the media published what was almost entirely the truth, that is the actual facts of what had happened and their evidential linkage to the defendant. They were given these facts by the SIO personally.

40. In relation to the nature of the publicity that resulted, Mr Latham submitted that this was a notorious investigation, both because of the storyline itself, involving the abduction of an attractive young girl, and the fact that the police had already actively engaged the media, in an attempt to progress the investigation, obtain assistance from the public and "flush out" the suspect.

41. There was therefore "saturation coverage" of this case and, by the time of the first press conference on 24 March, the public were waiting eagerly for the next thing to happen. The story, as Mr Latham expressed it, "went viral". Much of the newspaper coverage, both in the tabloids and the broadsheets, was either on the front page or just inside that page.

42. Mr Latham spent some time analysing various aspects of the publicity in support of these submissions. He noted that reports of the case had appeared not only in local and national newspapers, but also in other, regional publications, for example, the Northumberland daily paper "The Journal" on 25 March (at page 14) and the Newcastle Evening Chronicle for 26 March (page 8). In addition there was ample TV

coverage. It is not in dispute that much of the online material can still readily be discovered on the various network sites, including the filmed press conference given by DSupt Fulcher on 24 March.

43. As a result of this extensive and graphic coverage, Mr Latham submits that its harmful effects cannot now be rectified by the trial process. He submits that there is no chance that at least one juror will not recall the graphic publicity and the fact that this defendant had led the police to separate locations, where two bodies were to be found, and had admitted two killings, which were both intertwined. Inevitably they will recall the basic facts, even if they no longer recognise the name of the defendant or of the victim. It is therefore inevitable that they will recall facts which have now been ruled inadmissible. There is in this way a real risk, which cannot be removed, that at least one juror would be contaminated by this prejudicial publicity and that the juror would tell the others. The overwhelming prejudice to the defendant is such that no judicial direction could remedy the unfairness that has been caused and ensure that he can have a fair trial. The trial should therefore be stayed.

The Law

44. The applicable legal principles are not in dispute and they have been considered and applied on a number of occasions in recent years. My attention was drawn to the passages in **Archbold: Criminal Pleading, Evidence and Practice (12th edition)**, paragraphs 4-87 onwards, in

relation to situations where a stay may be considered necessary to protect the integrity of the criminal justice system, and to the various examples there set out, fairness to the accused being subsumed in that primary consideration in such cases (see **Warren v Att.-Gen. of Jersey** [2011] 3 WLR 464).

45. The question is whether that test is met on the evidence in this case. For a stay to be imposed there must be a connection between the wrongdoing and the trial, such that not only the wrongdoing but also the trial would be an affront to the public conscience (**R v Ahmed and Ahmed** [2011] Crim LR 734 CA). The court has to strike a balance between the public interest in ensuring that those who are accused of serious crimes should be tried and the competing public interest in ensuring that executive misconduct does not undermine public confidence in the criminal justice system and bring it into disrepute (see **Warren**).

46. In relation to adverse publicity and its effect upon the prospects for a fair trial, while it is correct that no authority has addressed the particular facts arising in this case, the principles established in the cases are clear and long-standing, and they are plainly of general application.

47. The earlier authorities relating to pre-trial publicity and its effects upon the fairness of a trial were comprehensively considered by the Court of Appeal Criminal Division in **R v Stone** [2001] EWCA Crim 297. In **R v Kray** [1969] 53 Cr App R 412, the issue was the extent to which

publicity relating to the appellant's conviction of murder in an earlier trial would influence jurors' minds and unfairly prejudice the appellant in a second trial on another charge of murder.

48. Acknowledging the presumption that anyone who may have read the publicity might find it difficult to reach a verdict in a fair-minded way, Kennedy LJ, giving the judgment of the Court in **Stone,** said as follows at page 415:

> "It is, however, a matter of human experience, and certainly a matter of the experience of those who practise in the criminal courts, first, that the public's recollection is short, and, secondly, that the drama, if I may use that term, of a trial almost always has the effect of excluding from recollection that which went before."

He went on to observe:

> "… to a very large extent juries are trusted by our system to concentrate on what is relevant and to ignore irrelevant and prejudicial matters even when they know of them."

49. In **R v Central Criminal Court ex parte The Telegraph PLC and Others** [1994] 98 Cr App R 91, the Court had applied this reasoning, Lord Taylor CJ stating as follows at page 98:

> "In determining whether publication of a matter would cause a substantial risk of prejudice to a future trial, a court should credit the jury with the will and ability to abide by the judge's direction to decide the case only on the evidence before them. The court should also bear in mind that the staying power and detail of publicity, even in cases of notoriety, are limited and that the nature of the trial is to focus the jury's mind on the evidence put before them rather than on matters outside the courtroom: see Kray …"

50. As Kennedy LJ observed, the question for judgment in each case is

whether the particular facts mean that the line has been crossed and a fair trial is no longer possible, so that the proceedings should be stayed. In deciding that question he said that the Judge should bear in mind, as Scott Baker J said in **Ex parte B**, 17 February 1994 (unreported) that:

> "In most cases, one day's headline news is the next day's firelighter. Most members of the public do not remember in any detail what they have seen on television, heard on the radio or read in the newspaper except for a very short period of time."

51. The same point was made by the Divisional Court in the case of **Attorney General v ITN and Others** [1995] 1 Cr App R 204, where Leggatt LJ said:

> "During the nine months that passed after anyone had read the offending articles, the likelihood is that he no longer would remember it sufficiently to prejudice the trial. When the long odds against the potential juror reading any of the publications is multiplied by the long odds against any reader remembering it, the risk of prejudice is, in my judgment, remote."

52. At paragraphs 47 – 50 Kennedy LJ endorsed the approach taken by Phillips J (as he then was) in considering the adverse publicity which had been accorded to Kevin and Ian Maxwell before they appeared for trial, as follows:

> " 'No stay should be imposed unless the defendant shows on the balance of probabilities that owing to the extent and the nature of the pre-trial publicity he will suffer serious prejudice to the extent that no fair trial can be held. I would accept this test, so far as it goes, but it remains necessary to identity the essential aspects of a fair trial for the purpose of the test. If it were enough to render a trial unfair that publicity has created the risk of prejudice against the defendant our system of criminal justice would be seriously flawed. There will inevitably be cases where the facts are so dramatic that almost everyone in the land will know of them. There will be circumstances when arrests are made of defendants whose guilt will, or may, appear likely. Intense media coverage may well take

place before a suspect is identified or apprehended. If in the most notorious cases defendants were to claim immunity from trial because of the risk of prejudice public confidence in the criminal justice system would be destroyed.'

48. After referring to two authorities the judge continued -

'Our system of criminal justice is founded on the belief that the jury trial provides the fairest and most reliable method of determining whether guilt is established. This belief is based on the premise that the jury will do their best to be true to their oath and to try the case according to the evidence. The ability of the jury to disregard extrinsic material has been repeatedly emphasised by judges of great experience.'

49. Phillips J then cited from Kray and concluded –

'It seems to me that the court will only be justified in staying a trial on the ground of adverse pre-trial publicity if satisfied on a balance of probabilities that if the jury return a verdict of guilty the effect of the pre-trial publicity will be such as to render that verdict unsafe and unsatisfactory. In considering this question the court has to consider the likely length of time the jury will be subject to the trial process, the issues that are likely to arise and the evidence that is likely to be called in order to form a view as to whether it is probable that – try as they may to disregard the pre-trial publicity – the jury's verdict will be rendered unsafe on account of it.'

50. That seems to us to be a valuable approach, …"

53. Deciding, after this detailed review, that the Court was satisfied on the balance of probabilities that the effect of pre-trial publicity in Stone's case, between October 1998 and February 2001, would not render unsafe a guilty verdict delivered in September or October 2001, Kennedy LJ said as follows at paragraph 62:

"The re-trial will not start until nearly three years after the October 1998 publicity, which is the principal target of complaint, and people do forget. Even if they do not forget entirely, the passage of time makes it easier for them to set aside that which they are told to disregard. …

> The risk of prejudice will be reduced if the trial does not take place in Kent, or even in London, because the impact of these crimes was at its greatest locally and it may be that some further safeguard can be provided by a few careful questions to the jury panel ….. But whether or not questions are asked we are not now satisfied that if the jury does convict their verdict will be found by this court to be unsafe by reason of the publicity to which we have referred."

54. The Court of Appeal Criminal Division considered the issue again in **R v Abu Hamza** [2006] EWCA Crim 2918, where the then Lord Chief Justice referred to applications for a stay of proceedings on the ground of abuse of process being a "growth area in our criminal process" and stated that in general the Courts have not been prepared to accede to submissions that publicity before a trial has made a fair trial impossible.

55. At paragraph 91 he endorsed the statement of the President of the Queen's Bench Division in the case of **In re Barot** [2006] EWCA Crim 2692, that:

> "There is a feature of our trial system which is sometimes overlooked or taken for granted. The collective experience of this constitution as well as the previous constitution of the court, both when we were in practice at the Bar and judicially, has demonstrated to us time and time again, that juries up and down the country have a passionate and profound belief in, and a commitment to, the right of a defendant to be given a fair trial. They know that it is integral to their responsibility. It is, when all is said and done, their birthright; it is shared by each one of them with the defendant. They guard it faithfully. The integrity of the jury is an essential feature of our trial process. Juries follow the directions which the judge will give them to focus exclusively on the evidence and to ignore anything they may have heard or read out of court. No doubt in this case Butterfield J will give appropriate directions, tailor-made to the individual facts in the light of any trial post the sentencing hearing, after hearing submissions from counsel for the defendants. We cannot too strongly emphasise that the jury will follow them, not only because they will loyally abide by the directions of law which they will be given by the judge, but also because the directions themselves will appeal directly to their own instinctive and fundamental belief in the need for the trial process to be fair."

56. Observing that the position is the same in Scotland, the Lord Chief Justice noted the remarks of Lord Hope of Craighead, in the Privy Council's decision in **Montgomery v HM Advocate** [2003] 1 AC 641, that Article 6 of the European Convention on Human Rights did not set out to make it impracticable to bring those accused of crime to judgment. The Strasbourg Court did not require the issue of objective impartiality to be resolved with mathematical accuracy. Account was taken of the fact that certainty in these matters was not achievable. Lord Hope went on to observe:

> "Recent research conducted for the New Zealand Law Commission suggests that the impact of pre-trial publicity and of prejudicial media coverage during the trial, even in high profile cases, is minimal: *Young, Cameron & Tinsley, Juries in* Criminal Trials: part Two, vol 1, ch 9, para 287 (New Zealand Law Commission preliminary paper no 37, November 1999). The lapse of time since the last exposure may increasingly be regarded, with each month that passes, in itself as some kind of a safeguard. Nevertheless the risk that the widespread, prolonged and prejudicial publicity that occurred in this case will have a residual effect on the minds of at least some members of the jury cannot be regarded as negligible. The principal safeguards of the objective impartiality of the tribunal lie in the trial process itself and the conduct of the trial by the trial judge. On the one hand there is the discipline to which the jury will be subjected of listening to and thinking about the evidence. The actions of seeing and hearing the witnesses may be expected to have a far greater impact on their minds than such residual recollections as may exist about reports about the case in the media. This impact can be expected to be reinforced on the other hand by such warnings and directions as the trial judge may think it appropriate to give them as the trial proceeds, in particular when he delivers his charge before they retire to consider their verdicts.
>
> … the entire system of trial by jury is based upon the assumption that the jury will follow the instructions which they receive from the trial judge and that they will return a true verdict in accordance with the evidence."

57. Acknowledging that the risk that members of a jury may be affected by prejudice is one that cannot wholly be eliminated, the Lord Chief Justice continued, at paragraph 93:

> “The fact, however, that adverse publicity may have risked prejudicing a fair trial is no reason for not proceeding with the trial if the judge concludes that, with his assistance, it will be possible to have a fair trial. In considering this question it is right for the judge to have regard to his own experience and that of his fellow judges as to the manner in which juries normally perform their duties.”

58. More recently the present Lord Chief Justice gave the judgment of the Court in **R v Dobson** [2011] EWCA Crim 1255. Noting that the “Stephen Lawrence” case had attracted an unusually high level of publicity, he noted that news “spikes” had continued since the collapse of the original prosecution in April 1996. At paragraphs 84 – 86 he identified the issue and the Court’s approach as follows:

> “84 The issue is stark. The question is not whether the publicity over the years was wise or ill-advised, but whether now, or at the date when the new trial, if ordered, would take place, the impact of that publicity would make a fair trial unlikely. Mr Roberts submitted that the effect of the publicity would be to prejudice any future juror, perhaps without the juror in question even appreciating that he or she had unconscious prejudice against any of the original suspects. The effect would be insurmountable. Mr Mark Ellison QC for whose equally careful submissions we are no less indebted, accepted that over the years there had been publicity for the case which was potentially prejudicial to the suspects, but he argued that the difficulties identified by Mr Roberts could and would be dispelled by appropriate judicial direction, in a trial in which the emotional aspects of the case would quickly give way to the practical reality that the jury would have to concentrate on the new scientific findings, the circumstances in which they were made, and the weight to be attached to them in the light of the defence case that post-incident contamination could not be excluded.
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> 85 If Mr Roberts is right, whatever new evidence may emerge, however powerful it may be, neither of the two original suspects who have not faced trial could ever face trial, nor could any of the three original suspects who have been tried and acquitted, be made the subject of a successful application for the acquittal to be quashed and a new trial ordered. That is because, on Mr Robert’s contention, any further trial, however carefully managed, regardless of the directions given by the judge, would be unlikely to be fair. In effect therefore, if he is right, the publicity over the years has now created an ineradicable prejudice against them with the result that they have been immunised against the risk of prosecution. That would indeed be a remarkable result.

> 86 Our conclusion is a matter of impression based on a careful analysis of the material which contains the potentially prejudicial publicity and ultimately judgment."

59. Referring to the previous authorities the Court concluded that the vast amount of publicity relating to the case was unlikely to render the subsequent trial unfair.

60. Finally, in the case of **R v Abdullah Ahmed Ali and Others** [2011] EWCA Crim 1266, a different constitution of the Court of Appeal Criminal Division considered whether the appellants could now have a fair trial in the light of publicity after the first trial. Thomas LJ, giving the judgment of the Court, referred to the first trial having attracted "world wide publicity" and to the "avalanche of publicity" on the day that verdicts were delivered and over the following days.

61. Acknowledging the fundamental importance of the requirement for an impartial tribunal, Thomas LJ said that the Court must in each case have regard to the trial process and its ability to deal with the publicity that had arisen. Referring to a number of the authorities I have included above, he then addressed the appellants' specific concern that jurors would inevitably discover information on the internet notwithstanding the Judge's clear direction to them not to do so, saying as follows:

> "To the extent that there remains the risk that, despite what jurors are told by a judge, an individual juror might look up matters on the internet, any attempt by an individual juror to use what was found to influence the views of other jurors is, in our judgement, bound to fail. For what was found on the internet to have any influence on the verdict of a jury, it

> would require other members of the jury to disobey their oath. In our judgement, the observations in Barot and in Abu Hamza hold good and the trial process in this trial was capable of coping with the adverse publicity."

The Present Case: Conclusions

62. I am not satisfied on the evidence that there was bad faith here on the part of the Prosecution. Mr Latham raised concerns as to the contents of Mr Brenchley's statement for the Crown Prosecution Service, as reported in The Mirror on 27 March. However, it is customary to use the phrase "working closely" with police officers, in relation to charging decisions and more generally, and I see nothing sinister in the use of that expression.

63. On its face this statement clearly and entirely properly urged restraint, in terms of publicity, and there is no evidence before me to suggest that the Crown Prosecution Service did anything other than urge restraint. I accept Mr Lawrie's submission, and it is not disputed, that as soon as he personally became aware of matters and heard of the strong concerns being expressed as to publicity by the defendant's representatives, he gave clear instructions that no more should be said. Thereafter efforts were made by the Crown Prosecution Service to urge restraint.

64. Nor am I satisfied that there was bad faith on the part of DSupt Fulcher. He frankly and unapologetically gave his reasons for acting as he did and expressed robust views in evidence, in an effort to explain and

justify the course he took and the reasons for it. Further, his evidence that his handling of the media was all done under the general supervision of the Gold Group was unchallenged. It is not clear what the individual members of the Gold Group actually knew about the specific terms in which DSupt Fulcher was briefing the media at his press conferences, but it is clear that this officer had authority to conduct these press conferences and to issue the various press releases, and that position did not change.

65. Mr Lawrie submits that, while this officer's judgment may be open to criticism, the exercise of poor judgment falls far short of a determination that he acted in bad faith. I agree. Far from deliberately and maliciously drip-feeding information to the media, as Mr Latham suggests, I find that DSupt Fulcher was openly and unashamedly briefing them for the reasons he gave and which he thought were appropriate at the time.

66. The first seven bullet points in the list of facts referred to above, all relating to the evidence which has been ruled inadmissible, all seem to me to be information given by DSupt Fulcher at the press conferences. The subsequent bullet point facts also came from the police and while there are references to "a source" or to "a police source", the terms are used interchangeably. Although he was not specifically asked about this when he gave evidence, I find on the balance of probabilities that this information also came from DSupt Fulcher. However, none of the evidence referred to in these subsequent bullet points has been ruled

inadmissible at the defendant's trial.

67. I take into account my findings as to the conduct of this officer in my earlier ruling. I accept that he was then annoyed and frustrated when the defendant stayed silent in interview under caution, as he was entitled to, on the advice of his solicitor. In briefing the media as he did DSupt Fulcher was plainly aware of what he was doing, but I find on the evidence that he genuinely took the view, misguided as it was, that his conduct was appropriate and justified at the time.

68. I consider that this was a serious error of judgment on his part, but I am not satisfied that he was acting in bad faith, or that there was otherwise serious fault on the part of the Prosecution, such as to render this defendant's trial an affront to the public conscience and to merit a stay of these proceedings on that ground alone. I do not consider that this officer's misjudgment, serious as it was, is properly to be categorised as an assault on the integrity of the criminal justice system.

69. There is, however, understandable concern by those representing the defendant that highly prejudicial, factual information was given to the media that has now been excluded as inadmissible evidence. The key elements of that information are that this defendant confessed to two murders and led the police to two separate locations where the bodies were to be found.

70. The key question for me, applying the legal principles set out above, is

whether the reporting of all this information and the publicity which ensued means that the defendant cannot now have a fair trial. I acknowledge that the risk which Mr Latham identified cannot be entirely eliminated, but the question is whether it is still possible for there to be a fair trial. In considering that question I have regard to my own experience of criminal trials and of the integrity of the jury and of the trial process generally.

71. It is a striking feature of a number of the authorities to which I have referred that the sheer scale and intrusive nature of the relevant publicity in those cases was substantially greater than that involved in the present case. Not all of it involved ill-informed comment or speculative reporting. Whilst Mr Latham seeks to distinguish such reporting from the accurate, factual information given to the media in this case, it is not always easy to draw the line. Some of the publicity described in the **Dobson** case, for example, seems to me to come close to factual reporting, and there will be other examples, such as those cases where a defendant's previous convictions are, accurately, the subject of publicity.

72. So far as the story itself is concerned, I accept that for the time it ran it was a story line which would attract the attention of members of the public. There were pictures of the murder victim and of the defendant; and also of the excavations being carried out in the search for the bodies. In my view, however, distressing as it is, it is not one of those cases where the facts are so dramatic or horrific that almost everyone

in the land knows of them and will instantly recall them if a particular detail is referred to. For a case like this the rapidly changing nature of news stories, including unhappily similar storylines arising from other crimes, is such that there is much force in the observation of Scott Baker J in **Ex Parte B** that most people do not remember in detail what they have seen, heard or read in the media about such a case except for a very short time.

73. Having analysed all the press reports with care, I accept that, for the approximately two-week period that the story ran, the coverage was graphic and intense. The numbers of articles containing the prejudicial material were substantial. However, the "echosonar" graph produced by the Prosecution shows that this coverage gradually decreased, the intense coverage ending just before 8 April 2011, when the defendant first appeared at Bristol Crown Court and when reporting restrictions were imposed. The coverage then 'flatlined' completely and, since then, it is a relevant factor that there have been no news "spikes" relating to any aspect of this case.

74. The picture is therefore one of intense, prejudicial publicity over a fixed period of time in March and April 2011. Even if it were accurate to describe this storyline as "notorious" and I do not think that it is, I accept Mr Lawrie's submission that the sting of notoriety has been drawn by the absence of any further reporting thereafter. In my judgment the story inevitably fades.

75. By the time of this defendant's trial, now fixed to start in February 2013, almost two years will have passed. In these circumstances, that is a substantial gap in time so far as the risk of recollection by any member of the jury is concerned. There is, of course, no mathematical formula for assessing the degree of diminution of that risk but, in general terms, the greater the lapse of time the more the risk is diminished. Reporting restrictions have remained, and will remain in place until the trial has been concluded.

76. Further, my decision to transfer this defendant's trial from Bristol to Preston, which has already come into effect, provides in my view a further, important safeguard in terms of this risk.

77. I acknowledge that much of the press coverage was national and not therefore restricted to local publications in or around Swindon and the south west. I recognise that the story even made it into two local publications in the north-east. However, there is no doubt that this story was of particular interest and importance to members of the public in Swindon and the surrounding areas. I am not persuaded, as Mr Latham submits, that it is inevitable that at least one of those summoned for jury service at Preston Crown Court in February 2013 will recall the prejudicial publicity in this case, or indeed any aspect of this case. While I accept that the risk cannot ever be entirely eliminated, the transfer of this case means that in general terms the risk becomes even more remote.

78. It is also the case that, in advance of the hearing before me on 4 April, the Head of Media Services at Wiltshire Police circulated a letter to all media outlets in relation to Operation Mayan, requesting the removal of all internet based press reporting material from 24 – 26 March 2011. A number of media outlets have confirmed removal of material from archive websites, including The Daily Telegraph, Associated News (the Daily Mail and the Mail on Sunday), Mirror Group Newspapers Limited, ITN Daybreak and The Sun and The Guardian newspapers. The BBC agreed to ensure that any reporting on active proceedings would not be linked to archive material.

79. Mr Lawrie rightly acknowledges that this, by itself, is of limited assistance and that not all media outlets have agreed to cooperate. In general terms, as he rightly accepts, once something is on the internet it 'goes viral' and cannot be eradicated.

80. However, in this respect it seems to me to be of particular importance to have regard to the emphasis on the collective responsibility among members of a jury; and to the directions relating to this that the trial judge must now give to a jury at the outset of each criminal trial, (see **R v Thompson and Others** [2010] EWCA Crim 1623, and **R v Lambeth** [2011] EWCA Crim 157).

81. The guidance currently given to Crown Court Judges in the Bench Book explains the importance of the Judge emphasising this collective responsibility right at the start of the trial, and directing the jurors to

report immediately any concern or any possible irregularity among their own number.

82. Part of the direction now routinely given at the outset of any trial involves a clear instruction to the jury, in strong terms, that they must not at any stage carry out any research themselves concerning the case on the internet, and an explanation of the reasons for that instruction, with appropriate warnings as to the serious consequences for any juror who disregards it. One of the reasons for doing this is to put the other jurors on guard, should one of their number be tempted to disobey that instruction, and to make them aware of the concept of collective responsibility for the proper conduct of a fair trial.

83. In my judgment, the giving of these directions is a further, important step diminishing the risk of any faded recollection triggering internet research by a juror in breach of the judge's instruction, and the risk of any subsequent contamination of other jurors. The focus of all the jurors, in accordance with their oath or affirmation and supported by judicial direction, will be throughout on the evidence to be called at the trial.

84. In that respect the Case Summary prepared by the Prosecution in this case demonstrates that there will be a welter of admissible evidence for the jury to consider at the trial of this defendant and on which they will concentrate, as directed by the Judge and as required by the trial process.

85. For all these reasons I am not persuaded to the requisite civil standard that it is impossible for this defendant to have a fair trial on the charge of murder. His application for the proceedings to be stayed for abuse of process is therefore dismissed.

APPENDIX

In the Bristol Crown Court

T2011/7126

Hearing date: 3 February 2012

Regina

V

CHRISTOPHER JOHN HALLIWELL

RULING ON PRELIMINARY ISSUE: Admissibility of Evidence

Introduction

1. The Defendant, Christopher Halliwell, aged 47, is currently before the Court on an indictment containing two counts of murder. Count 1 charges him with the murder of Sian O'Callaghan, on a day between 19 and 24 March 2011. On Count 2 he is charged with the murder of Rebecca Godden-Edwards on a day unknown between 2003 and 2005.

2. At the PCMH on 28 July 2011 no pleas were entered because the Defence indicated that they wanted to raise a challenge to the admissibility of the evidence contained in the witness statement of Detective Superintendent Fulcher, dated 1 April 2011, together with

other associated evidence said to be tainted by the activities of that officer.

3. The contested evidence relates to the entire series of events which followed the Defendant's arrest until his arrival at the Gable Cross Police Station in Swindon some 4 hours later. It includes an "urgent interview" conducted with the Defendant by DSupt Fulcher, before and during his indication to the police of the location of Ms O'Callaghan's body, and further admissions made by the Defendant in respect of the murder of Rebecca Godden-Edwards and the location of her body.

4. The challenge to admissibility therefore covers the period from the moment of the Defendant's removal by DSupt Fulcher from his place of arrest in the ASDA Walmart car park, Thamesdown Drive in Swindon, at 11:06am on 24 March 2011, until his arrival at the Gable Cross Police Station at 3:15pm.

5. On behalf of the Defendant, Richard Latham QC submits that, in what he describes as a wholly unique and unprecedented series of events, the evidence reveals such substantial and irretrievable breaches of PACE and the applicable Codes that this evidence is rendered inadmissible.

6. At the voire dire, which took place over four days, I heard oral evidence from DSupt Fulcher, PC Hine, DC Derrick, PI Ewart, PS Strange, DS Cooper and Deputy Chief Constable Geenty, who was Assistant Chief

Constable at the relevant time. A number of witness statements and contemporaneous police policy and procedure documents were also referred to. The Defendant, who was not called to give evidence on the voire dire, has given no indication of his defence to these charges. He answered "No comment" throughout his lengthy interviews under caution after his arrival at the police station and no Defence Statement has yet been served.

The Facts

7. In March 2011 the Defendant was working a self-employed taxi driver with a company called Five Stars Taxis. He was working in the Swindon area on the evening of 18 March and early hours of 19 March, driving a green Toyota Avensis, registration number AV07 FZF. Magnetic signs advertising the taxi company were attached to the sides of this vehicle.

8. Sian O'Callaghan, who was aged 22, was living at an address in Swindon with her partner. On the evening of 18 March she went out for the evening with some friends, ending up at a nightclub called Suju on the High Street in Swindon Old Town.

9. I have had regard to the entirety of the evidence revealed by the police investigation in this case but, for the purposes of the voire dire, it is important to set out those facts which played a part in the thinking and

decision-making of DSupt Fulcher as they evolved over the relevant period.

10. Ms O'Callaghan was reported missing at about 09:45 on 19 March. PSpt Prichard treated her disappearance as a "level 1 missing person investigation", a level that applies where a person is assessed to be in immediate danger or likely to suffer significant harm.

11. The police strategy, as described by PSpt Prichard, included the following:

    - To locate Ms O'Callaghan and safeguard her from any harm;
    - To develop intelligence and information in order to establish her location;
    - To utilise media opportunities in order to support these objectives; and
    - To maintain an open mind in terms of any potential criminal act and therefore seek to secure and preserve evidence.

12. Over the next 24 hours there were the following developments in the investigation:

(a) CCTV footage showed Ms O'Callaghan leaving Suju alone at 02:53 on 19 March, walking in the direction of her home about 10 – 15 minutes walk away.

(b) CCTV footage also showed a car repeatedly circling the Old Town and, shortly after 02:57, stopping by the pavement in the High Street in the vicinity where Ms O'Callaghan is last seen. The glare of the car's headlights meant that it was not possible to say why the car had stopped. Nor could its make or registration number be made out. However, after it pulled away still travelling towards the camera, Ms O'Callaghan can no longer be seen. The police believed the Ms O'Callaghan was now inside it. The car was driving in the direction of Marlborough Road.

(c) By chance, at 02:59 this car was picked up on the Marlborough Road by a mobile police vehicle with an ANPR facility, which was travelling along the Marlborough Road in the opposite direction towards the Old Town, but this was not discovered by officers investigating Ms O'Callaghan's disappearance until 22 March.

(d) Ms O'Callaghan's mobile phone had registered on telephone masts at Baydon, at 03:06, and at Cadley, close to Marlborough in the Savernake Forest area at 03:25 on 19 March.

13. The police believed Ms O'Callaghan had been abducted and, in the late afternoon of 19 March, a category A police investigation called "Operation Mayan" was started, with DSupt Fulcher appointed as Senior Investigation Officer (SIO). Category A is the most serious category, denoting a major investigation of significant concern where any member of the public is at risk, the offender is unknown and where the investigation and the securing of evidence requires the allocation of significant resources.

14. DSupt Fulcher designated it a category A investigation because Ms O'Callaghan had now been missing for some 12 hours and could not be contacted, which was completely out of character. There were therefore significant concerns for her safety.

15. On assuming command and assessing the information then available DSupt Fulcher considered three hypotheses:

    (1) On leaving Suju, Ms O'Callaghan had been enticed into the vehicle or forcibly abducted, driven to the Savernake Forest area and incapacitated so that she was unable to use her phone;

    (2) She had met an acquaintance and gone with them voluntarily, failing to make contact with friends or family for reasons unknown; or

    (3) She had become separated from her phone and had met with an accident or rendered incapacitated by unknown persons or events.

16. He appointed DI Steve Kirby as his Deputy SIO and set up various lines of enquiry, including house to house enquiries and the reviewing of video footage and telephony. A media strategy was discussed with the designated police media officer and a press release was issued appealing for information regarding Ms O'Callaghan's whereabouts.

17. On 20 March a "Gold Group" was established, chaired by ACC Geenty, to provide support to, and oversight of the investigation and of the allocation of sufficient resources, given its designation as a "critical incident" with potentially far-reaching consequences for the reputation

of the Wiltshire Police Force. Membership included members of the Independent Advisory Group, to represent community interests, and a member of the Police Authority. At 14:20 on 20 March the strategic objectives referred to above were reiterated and further steps detailed.

18. By 21 March however the police were no nearer to discovering who had abducted Ms O'Callaghan. They therefore had no information as to her condition or where she might be, save that it was possible that she might be in the Savernake Forest area judging from her last mobile registration. Enquiries continued, the crime being regarded as a "crime in action" i.e. an offence which is actually occurring while the investigation is being conducted including for example, kidnap or abduction of the kind in this case. Resources commensurate with the urgency and seriousness of the investigation were made available.

19. The breakthrough came on 22 March. The CCTV footage was reviewed by an image analyst. On 22 March the opinion he gave was that the car seen on the footage was a dark-tone Toyota Avensis estate, manufactured between 2003 and 2008. He noted the presence of a slightly lighter area on the doors, which he thought could be a sticker.

20. By this stage (about midday) DSupt Fulcher amended his hypothesis. He considered there could be a sexual motive to the abduction and the search criteria were refined to include local beauty spots within the

Cadley mast area, such as Barbury Castle, a large rural location popular with walkers and horse riders.

21. Meanwhile, PS Beresford Smith had spotted the ANPR police car on the CCTV footage. At 12:00 on 22 March he gained access to the recordings of vehicles between 02:53 and 03:15 on 19 March. The vehicle which proved to be of interest was a dark coloured car travelling from Swindon Old Town with a taxi advert on the driver's door for "Five Star" and the registration number AV07 FZF. A PNC check confirmed the registration number as belonging to a green Toyota Avensis estate, with the registered keeper being the Defendant.

22. He relayed this information to DSupt Fulcher at 2pm. Thus, by 2pm on 22 March, the police had a significant and positive lead as to the identity of the car used to abduct Ms O'Callaghan and as to its driver. The Defendant was at this point nominated as "TIE" (Trace, Interview and Eliminate) meaning someone reasonably assumed to be involved and in whom the police have an interest as part of their investigation, but who is not actually a suspect.

23. At the same time the Defendant also became a "subject" for the purposes of 24-hour covert surveillance, which was authorised on the basis of the intelligence then available and which ran from about 15:00 onwards on 22 March. The relevant policy book entry (Decision no. 21) stated "*Sian has yet to be found and surveillance provides the best*

opportunity of identifying her current location, should Halliwell be prompted to return to the deposition."

24. Within a short time the surveillance showed the Defendant behaving strangely and suspiciously. Twice in a short period of time after 17:30, on 22 March, the Defendant was observed cleaning the rear passenger seat of his car with cleaning fluid. Later that same evening it appears that the Defendant attended the police station, telling them that his daughter had reported being raped the previous evening. At 22:02 that evening, he was seen depositing items in a wheelie bin (car seat covers and head rest covers were subsequently retrieved) and a perfume bottle in a dog litter bin. Just after 00:52 on 23 March he was observed on the A420 Oxford Road and then on the B4507 near Uffington. At approximately 02:15 he drove through the village of Wanborough and, shortly afterwards, the police spotted material burning in a road near the village. All this information was relayed to DSupt Fulcher.

25. At a briefing held in the morning of 23 March DSupt Fulcher stated that the investigation was expected to run into the weekend and that the primary objective was to identify where Ms O'Callaghan was. Media and search strategies were said to be the key to the day's events. At this stage his plan was to try and engage the Defendant through media releases in the hope that this would encourage him to return, under surveillance, to wherever he had left Ms O'Callaghan.

26. At about midday on 23 March detectives went to speak to the Defendant at his home address, as part of the TIE process, during which a buccal swab was taken. The Defendant also provided a statement, which the Crown state is not to be used at trial, in which he gave an account of his movements during the early hours of 19 March. Parts of his account were clearly inconsistent with the CCTV footage of the Toyota's movements. The officers observed that, during the taking of this statement, the Defendant appeared to be "stressed". He was described as "close to tears and visibly shaking", a description which was conveyed to DSupt Fulcher.

27. Whilst the TIE statement was being taken from the Defendant, at 13:40 DSupt Fulcher asked for a meeting with ACC Geenty, so that he could appraise him of the current situation and of the covert surveillance and media strategy he had deployed to try and prompt the Defendant to return to where Ms O'Callaghan was. The record of this meeting includes discussion and agreement of the following matters:

> "*In order for him to perhaps lead us to a deposition site he was not arrested … He has not been arrested because it is still hoped he will take us to a deposition site. At the moment a TIE is taking place now to get an account of his movements from him at the material time. A buccal swab will also be taken. Strategy SIO wishes to take … At teatime news SIO would like to issue a statement saying: we are getting close, dogs to be employed, loss of daylight search will continue in morning. Halliwell may respond after dark … If he does nothing, arrest evening tomorrow. The risk is that H does himself harm prior to arrest. SIO explained the reported rape of Halliwell's daughter and circumstances. ACC agreed with decision not to arrest H to date. Prospect of not recovering Sian's body. SF said we have evidence of burning etc. ACC asked what could go most wrong – major concern is suicide of H – ACC said this was manageable and happy with this. ACC*

agreed with rationale around H's house, that she is unlikely to be there and there is nothing we are doing to jeopardise Sian's life. H is under surveillance – car & house. SIO would like to recover Sian. A further tactic would be to release press statement regarding interest in the Toyota Avensis and sightings of it. Arrest will be affected on 1900 24/3/2011. ACC is happy that this is an appropriate course of action in order to find Sian and secure evidence to secure a conviction."

28. It is clear on the evidence that, at this point, ACC Geenty supported DSupt Fulcher's general approach and the decisions being taken. The Defendant's arrest was to be delayed until 7pm on 24 March, in the hope that he would lead the police to the place where he had taken Ms O'Callaghan.

29. However, DSupt Fulcher had a genuine concern that the pressure now mounting on the Defendant might lead him to commit suicide. At this stage, whilst he feared that Ms O'Callaghan could already be dead and it was clear that she was incapacitated, he nevertheless hoped that she was still alive and the entire focus of the investigation was still to find and recover her alive. ACC Geenty confirmed in his evidence that, notwithstanding the use at times of the terms "body" and "deposition site" this was still the entire focus of the investigation. During the briefing with DSupt Fulcher the clear intention of them both was, if at all possible, to find Sian O'Callaghan alive.

30. The press releases at this time were therefore deliberately designed to indicate to the Defendant that the police were close to finding Ms O'Callaghan, in the hope that this would increase the pressure upon

him and prompt him to return to the place he had taken her. DSupt Fulcher noted (Decision 23) that:

> "*It is clear to me that the only way of finding Sian is by HALLIWELL taking us to her.*"

The downside of these tactics was the risk of suicide, which was a genuine and informed concern. The operational and senior staff were briefed to anticipate this risk and to maintain an even closer watch on the Defendant.

31. By 17:00 on 23 March DSupt Fulcher formally nominated the Defendant as a suspect, although he accepted in cross-examination that, as soon as the decision was taken to "let him run" and not arrest him, he had reasonable cause to suspect him to be the perpetrator of the crime. In any event, it was clear by now that the media strategy was not working.

32. Later that evening DSupt Fulcher spoke to DS Cooper, the Wiltshire Force tier 5 (highest level) interview adviser, whose role it is to give advice, or a steer on interview procedure. DS Cooper advised him of the "urgent interview" procedure under PACE Code C.11.1, which he suggested could be used if they were forced to arrest the Defendant ahead of the planned time of 7pm on the following day. DS Fulcher had never used this procedure before. DS Cooper confirmed that he thought this was one of those rare occasions when such an urgent interview could possibly be justified, given the need to find Ms

O'Callaghan. In evidence DSupt Fulcher accepted that he was aware that all the other elements of PACE, including the giving of a caution, still applied to such an interview.

33. Having received what DSupt Fulcher described as "expert advice" on this option he decided to make arrangements for such an interview to proceed after the Defendant's arrest. In Decision no. 24 he noted:

> "Urgent Interview Strategy – DS Bob Cooper will prepare an interview strategy to conduct a suspect interview under Section 11.1 of PACE with his tier 3 interview team following the surveillance team. When the SIO directs that an arrest be affected, an urgent interview will be conducted because at this time I have no means of knowing whether Sian is alive or dead and I consider this to be an emergency situation which requires measures to be taken to identify her location."

34. At some point on 23 March, although he could not recall exactly when, ACC Geenty was informed of the intention to conduct an urgent interview, a decision which he accepted as appropriate in the circumstances. In his evidence ACC Geenty agreed that, whilst this would be an unusual step to take, the provisions of Code 11.1 enable the police, in prescribed circumstances, to conduct an urgent or instant interview that cannot await transport to a police station, or await the attendance of a solicitor on arrival at the police station if that would lead to unreasonable delay. In this case the prescribed circumstances were that delay would be likely to lead to physical harm to Ms O'Callaghan. Save in very special circumstances where, under C.6.6,

access to a solicitor may be denied, ACC Geenty agreed that all the provisions of PACE and the Codes, including the requirement to give a caution, still apply to urgent interviews of this kind.

35. Between 11:00pm and 7am on 24 March the Defendant was alone inside his house. DSupt Fulcher remained extremely concerned about the risk of suicide during the night and did not himself sleep that night. He was therefore relieved to learn that the Defendant was seen driving his taxi again early on the morning of 24 March. However, just after 10am the Defendant was seen by surveillance officers to deposit two wrappings in a waste bin outside Boots. DSupt Fulcher was informed at about 10:08 that the Defendant had just purchased "an overdose quantity" of paracetamol. As a result he decided not to wait until the evening, but to order the Defendant's immediate arrest.

36. On 24 March the Defendant's arrest was carried out at 11:06 by PC Hine in the ASDA Walmart car park, where the Defendant was observed to be about to collect shoppers and his car was therefore stationary at that time. PC Hine was on duty with PC Mulliss in a marked police car that morning. At about 11am he was told by acting DI Hubbard to attend the car park and to arrest the Defendant on suspicion of kidnapping Ms O'Callaghan. He was given a description of the Defendant's vehicle.

37. On arrival PC Hine saw the vehicle with its boot open and he approached it from the rear. The Defendant was standing inside the

driver's door, which was open with the keys in the ignition. PC Hine had been given no instructions as to how to affect his arrest. He assessed the situation as one which posed both a risk of escape and a risk to his own personal safety. Given the seriousness of the offence he decided he would take no chances and that he needed to prevent the Defendant from getting into the car.

38. As a result the Defendant's arrest took a robust form. In the circumstances no criticism is made of that by Mr Latham on behalf of the Defendant but the fact is that the arrest was affected in this way. PC Hine immediately detained the Defendant into an arm entanglement lock with his right arm and took him to the ground shouting "Get on the floor". PC Mulliss also attended and the Defendant was handcuffed with his arms to the rear.

39. PC Hine told the Defendant he was being arrested on suspicion of the kidnap of Ms O'Callaghan and he then cautioned him. The Defendant responded that he understood.

40. He placed the Defendant into the rear near-side of the marked police car. He asked him for his name and the Defendant gave it, together with his date of birth. The Defendant asked if he could get his tobacco out of his car, but this request was refused. Asked to describe his demeanour for the short time that he was in the police car PC Hine said that he appeared calm. A few minutes later the Defendant was

removed from this vehicle by attending CID officers, for the purposes of the urgent interview prepared by DS Cooper.

41. On the previous day, following his discussion with the SIO, DS Cooper had prepared a strategy for this interview and had deputed two experienced officers, DCs Derrick and Bevan to conduct it after the Defendant's arrest. He provided guidance on the procedure to these officers, handing them a copy of the provisions of PACE C:11.1, on which he had added these words of his own:

> "*This investigation is a crime in action. The whereabouts of Sian O'Callaghan are unknown. The SIO has directed that an urgent interview be conducted immediately upon the arrest of Mr Halliwell to establish the whereabouts of Sian O'Callaghan.*
>
> *The questioning is only to establish the whereabouts of Sian O'Callaghan and will cease once the risk to Sian's safety has been averted.*
>
> *Any questioning will be recorded contemporaneously at the time*"

DS Cooper had discussed this guidance with both officers, emphasising that the questions they asked had to focus purely on Ms O'Callaghan's whereabouts. He also instructed them to caution the Defendant before commencing to question him.

42. Early on 24 March DS Cooper was informed by DSupt Fulcher that the Defendant's arrest was being brought forward and he notified DCs Derrick and Bevan accordingly. DS Cooper's understanding, as he explained it in evidence, was that, if the Defendant refused to answer

their questions, the urgent interview would come to a close, at which point he would expect the Defendant to be taken to the police station where the normal procedures would then be adopted.

43. DS Cooper drove DCs Derrick and Bevan to the ASDA car park, where the Defendant was detained and instructed them to carry out the urgent interview.

44. DC Derrick gave evidence that, as far as he was concerned, their main purpose was to find out whether Ms O'Callaghan was alive and where she was located, be she alive or dead.

45. Within minutes of his arrest the Defendant was placed, still handcuffed, in their unmarked police vehicle in the car park for this purpose. The Defendant understood that he had been arrested and DC Derrick stated that he immediately gave him the "old fashioned" caution, applicable in urgent interviews, which he agreed was the priority before asking him any questions. The interview was recorded contemporaneously and the whole interview, including preliminaries and the caution, lasted from 11:20 until 11:28. At its conclusion the Defendant signed it and the contents are not in dispute. They read as follows:

"DC Derrick: Arrested and Cautioned.
Explanation of arrest.

DC Derrick: The focus of the investigation is to find Sian

O'Callaghan, tell me where Sian is.

HALLIWELL:	I don't know.
3 3 22:	Can you help us with where Sian is?
CH	I don't know where she is, I don't think I should say anymore without speaking to a solicitor.
3 3 22:	Do you know if Sian is safe?
CH:	No comment.
3 3 22:	Can you help us in finding out if Sian is safe?
CH:	No comment, not until I speak to a solicitor. Can I go to the police station now?"

46. As far as these two officers were concerned, the urgent interview was then at a close. DC Derrick stated that he could not think of a way of formulating any more questions. He and his colleague both thought there was nothing more they could do and that was an end of the matter. Asked to describe the Defendant's demeanour during this interview DC Derrick described him as looking "like a rabbit caught in the headlights".

47. DC Bevan left the vehicle to tell DS Cooper that the Defendant was not saying anything and that he wanted a solicitor and wanted to go to the police station. Once DS Cooper had checked with her that they were happy they had covered everything and she confirmed this, DS Cooper also considered that was an end of the matter.

48. At 11:45 therefore DS Cooper instructed PS Strange, who was already at the scene, to convey the Defendant to the custody unit at Gable Cross police station. Together with PC Hatt, PS Strange took the Defendant into his custody at 11:49 and sat him in the back of his marked police vehicle. They set off on their way to the station.

49. After they had left DSupt Fulcher, who was in the SIO room at Gable Cross "pacing the floor", rang DS Cooper and asked if the Defendant had given them any information. He was told that the Defendant had said nothing, that the urgent interview had now ceased and that the Defendant was now on his way to the police station.

50. However, events now took an unexpected turn. DSupt Fulcher instructed DS Cooper not to send the Defendant to the police station but to have him taken to Barbury Castle, telling him that he wanted to "continue" the urgent interview himself. DS Cooper stated that he did not discuss that instruction with him, but fulfilled the instructions of the senior officer in the case. Whilst it was his view that his officers had gone as far as they could go and that the urgent interview had now come to an end, the SIO took a different view.

51. It is significant, given what was to happen, that in Decision 26, DSupt Fulcher noted the information he had received as to the Defendant's silence as a "*refusal*" by him to identify Ms O'Callaghan's location and he agreed in evidence that is how he viewed it. He noted that he was

going to conduct a "*continuing urgent interview as a final attempt to persuade him to give me the location of Sian*."

52. DS Cooper immediately told PI Ewart to stop the police car that was now on its way to the station. PI Ewart contacted PS Strange at 11:51 and instructed him over his personal mobile not to take the Defendant to the police station, but to take him to Barbury Castle. PS Strange then drove the Def, still handcuffed although his arms were now at the front, to Barbury Castle. At first PS Strange did not tell PC Hatt or the Defendant where they were going. On their way, however, the Defendant asked "Why are we driving to Marlborough?" He then told him that they were going to Barbury Castle and the Defendant appeared to nod in acknowledgment. In that brief interaction between them PS Strange described the Defendant's demeanour as "calm".

53. This decision of DSupt Fulcher had not been notified to ACC Geenty.

54. The Defendant arrived at Barbury Castle at 12:11pm. DCs Derrick and Bevan had also been instructed to go Barbury Castle. Other police officers were already in that area as part of the search teams.

55. In his evidence DSupt Fulcher gave a full, frank and unapologetic explanation of the decision he made and the actions he took. When asked to explain the purpose of his instruction for the Defendant to be taken to Barbury Castle, he said that the sole purpose was as "a last appeal to him to give me some indication of where Sian O'Callaghan

was", so as to save her life. Further, he believed that it was necessary for him personally to do this, notwithstanding the failure of the urgent interview process to illicit this information, because only he as the SIO had the authority to assess the Defendant and to take the decision, notwithstanding the "strictures" of PACE, to "look him in the eye and to ask him this one thing – will you take me to Sian?". His officers could only work within the parameters which had been set for them. He deliberately chose Barbury Castle because he considered it to be the most likely place where Ms O'Callaghan would be. Although he accepted that he could have conducted a further urgent interview at the police station, he said that he considered it better to take the Defendant to what he believed at that time to be the most likely scene of some crime.

56. DSupt Fulcher asked a civilian member of staff, Debbie Peach (personal assistant) to accompany him, so as to write down what was said in the urgent interview of the Defendant that he now intended to conduct himself. Despite the numbers of police officers available, he asked no police officer to accompany him for this purpose, either before he went to Barbury Castle or after he arrived there. He wanted to speak to the Defendant one-to-one.

57. In answering question from Mr Lawrie QC, on behalf of the Crown, DSupt Fulcher volunteered the information that the Deputy SIO, DI Kirby did not agree with what he was proposing to do and that he had advised him not to take this step. DI Kirby told him that he thought it

was not a good idea and that they would be “sailing very close to the wind” in terms of breach of PACE. DSupt Fulcher did not heed that advice.

58. When the Defendant was produced at Barbury Castle DSupt Fulcher, who was already there by now, took him a distance of about 50 yards away from the car, still handcuffed, in order to talk to him on his own. He then interviewed him whilst Ms Peach, standing behind him, did her best to write down what was said.

59. In fact, the accuracy of her summary of this interview is not disputed. It reads as follows:

> “SF introduced himself. Are you going to tell me where Sian is?
>
> CH: I don’t know anything.
>
> Are you going to show me where Sian is. Whats going to happen. If u tell us where Sian is that whatever you will be portrayed you would have done the right thing,
>
> CH: I want to go to the station
>
> Are you prepared to tell me where Sian is
>
> CH: You think I did it
>
> I know you did it.
>
> CH: Can I go to the station.
>
> You can go to station. What will happen is that you will be vilified.

If u tell me where Sian is you would have done the right thing.

CH: I want to speak to a solicitor

You are being given an opportunity to tell me where Sian is. In one hour's time you will be in the press.

I want to spk to a sol

You will spk to a sol. I'm giving you an opportunity to tell me where Sian is. By the end of this cycle you will be vilified, tell me where Sian is.

Have you got a car – we'll go."

60. I note the following important points in respect of this interview. First, whilst this is agreed to be an accurate summary of the interview, it is not in dispute that the interview lasted from 12:11 to 12:20pm. Whilst it is not suggested that any questions with different content were asked and not recorded, it is accepted that, even allowing for some periods of silence during those nine minutes, DSupt Fulcher was repeatedly making the same points and asking the same questions and that the Defendant was repeatedly giving the same responses before finally asking DSupt Fulcher if he had a car. DSupt Fulcher accepted in evidence both that this was an interview, and that it took him the best part of eight or nine minutes to "persuade" the Defendant to agree to assist him. In the debrief he gave at the station at 18.25 that evening he referred to the Defendant as having "*eventually*" agreed to show him the deposition site. There is no dispute that, although DSupt Fulcher referred to "continuing" the urgent interview when he spoke to DS Cooper, this was in reality a second, separate interview.

61. Secondly, DSupt Fulcher frankly admitted that it was a deliberate decision on his part not to caution the Defendant, or not even to remind him that he was still under caution. The "key issue" he said was to save her life and that aim would be thwarted if he opened the interview by telling the Defendant that he was entitled not to say anything. He stated that he considered Sian's right to life was more important than a PACE compliant interview and that "I felt it was the right thing to do in the circumstances I was faced with". Mr Latham asked him if he was saying that the end justifies the means. He answered "Well, in these circumstances it does".

62. In explaining his thought processes further he stated that, if the Defendant had been taken to the police station, he would have been booked in and given his rights again. His request for a solicitor would have been granted and the custody sergeant would have ensured that whatever happened to him was PACE compliant. In his view there was an equation to balance between the Defendant's right to silence and Ms O'Callaghan's right to life and her right to life, in his view, was the prior claim, even though he realised that it would involve significant breaches of PACE. He was prepared to take this course in order to achieve that intelligence and stated "I was purely going to persuade him to do what in my view was the right thing – to save Sian's life". He accepted that there was a fundamental difference between making a moral decision in order to gain intelligence and information, which may save someone's life, and translating that intelligence into admissible

evidence in a criminal trial. Nevertheless, he said that where the results of the particular circumstances were as dramatic as they were here, essentially the end justified the means.

63. Thirdly, he explained the questions he asked in the following way. His reference at the start to the fact that the Defendant would have been portrayed as having done the right thing, if he told him, was part of his appeal to the Defendant, coming so soon after the huge public reaction to the case of Joanna Yeates and the initial arrest of an entirely innocent man.

64. Whilst the Defendant was repeatedly asking to be taken to the station and asking to speak to a solicitor, he stated that he felt it would be right to ignore these requests and to persist with the questioning so that he did not "accept the inevitability of Sian's death by not asking questions of the one person who can tell me".

65. With the media furore in the Joanna Yeates case fresh in his mind, he stated that he told the Defendant that he would be vilified in the press if he did not tell him where Sian was because he was "seeking to persuade him to do the right thing". He agreed that he had told the Defendant that he would be talking to the media within the hour and part of the persuasion he was using was to tell the Defendant that it would be a better position for him to be in, so far as the press were concerned, if he told him where Sian was.

66. Fourthly, he described the Defendant's demeanour throughout this interview as "calm" and "subdued". As they got into the car so that the Defendant could show him where Ms O'Callaghan was located DSupt Fulcher's assessment was that "it appeared as if a weight was lifting from his shoulders".

67. The rest of Ms Peach's note and the evidence of PS Strange, who was driving, indicate that, once in the police car, DSupt Fulcher sat in the back with the Defendant, who gave them directions in a voice described as "quietly spoken". During this drive DSupt Fulcher continued to ask him questions about what had happened, where he had killed her, where he had "dumped the body", whether he had repositioned her, whether or not she was clothed and what he had done with her phone. Whilst he referred to this as a "chat", DSupt Fulcher ultimately accepted that this too was an interview and that the Defendant had been given no caution before being asked these questions. His explanation for persisting with these questions was that if he "took him out of that moment in time he might dry up". He agreed that if he had been at the police station interviewing him as a murder suspect he would not have conducted an interview with him without first cautioning him.

68. The drive took about 45 minutes and they went to a remote rural location about 20 miles away, beside the B4507, on the Lambourne Downs in South Oxfordshire. In the end the Defendant could not locate the exact point where Ms O'Callaghan's body was, but he did

provide sufficient information for markers to be set up for the search teams. Her body was found later on that afternoon.

69. Once this interview had come to an end, at about 13:21, DSupt Fulcher told the Defendant that he was now going to hand him over to a police constable to arrest him for murder and take him to the police station. The Defendant then said words to the effect, "You and me need to have a chat". DSupt Fulcher said that he was interested to hear what the Defendant had to say and he therefore asked PS Strange to drive them to a suitable location, out of view of any members of the public.

70. PS Strange stated that he was instructed to pull off the road at the Uffington White Horse, where he then drove some distance up a very steep road and pulled over next to a small path, which is used by walkers to access the brow of the hill. DSupt Fulcher and the Defendant then got out of the vehicle and walked around 30 – 40 metres away, with Ms Peach accompanying them, and they sat down on the grass at the edge of the path.

71. The Defendant then said that he was a "sick fucker", asked DSupt Fulcher if he wanted "another one" and told him that he could take him to another location, which DSupt Fulcher interpreted as a reference to a victim of another murder committed by the Defendant. However, he did not arrest or caution him. He decided just to continue this process because he thought it might be "the only chance to find out what he wanted to show me". Once again he made a deliberate decision not to

caution the Defendant, stating that "I didn't consider it relevant to the moment in time we were in. I believed the right thing was to obtain the information we were going to get, not contain it". Asked to reflect on that in the witness box he accepted that, if there was to be a trip to find another body, the Defendant could expect to be cautioned and that PACE required him to be cautioned.

72. They then got back into the police car and, at 13:53, set off once again, the Defendant directing them to drive to a field some 30 miles away near the village of Eastleach in South Gloucestershire. Once there, the Defendant pointed to an area in a 40-acre field where he said he had buried another woman, whom he had killed at some point between 2003 and 2005. Subsequently the police discovered the remains of Rebecca Godden-Edwards, a young woman who had not previously been reported to the police as missing.

73. On the way to Eastleach Ms Peach's notes indicate that DSupt Fulcher asked the Defendant a number of further questions about what had happened, and that the Defendant observed that "normal people don't go round killing each other" and asked about help he might be able to get. DSupt Fulcher asked him whether there were any more incidents, and whether he had done anything in February. He also asked the Defendant more questions about what he had done to Sian O'Callaghan and how she was killed. He told the Defendant that he had been the subject of surveillance. During this conversation, which

DSupt Fulcher agreed was also an interview, the Defendant was described as being "quite emotional".

74. DSupt Fulcher did not accept that in these extraordinary circumstances, when the Defendant first told him about Ms Godden-Edwards, he should be criticised for not arresting the Defendant for murder and cautioning him, even though PACE required him to do so. He did not do so because he believed, once again, that it would "interrupt the flow" and that the right thing to do was to obtain the information and not contain it. He frankly accepted that, for the next hour after the Defendant had offered him "another one", his actions were all non-PACE compliant, even though at this stage the urgent interview procedure sanctioned by Code C.11.1 was over. He suggested at one point in his evidence that he thought Code C.11.1 "could conceivably still apply" since it was also about "preserving evidence", but he subsequently accepted that adherence to the Code meant that the Defendant should have been cautioned when he first mentioned the case of Ms Godden-Edwards. He described his role as being "to gather such evidence as may come my way or to gather such intelligence as may become evidence, subject to the Court's view".

75. At 14:43 the Defendant was finally taken to the police station, DSupt Fulcher telling him at that point that other officers would "explain his rights to him". The Defendant arrived at the station at 3:15pm, where he was formally processed and requested the assistance of a solicitor.

It is not in dispute that, once they were contacted, the solicitors arrived within an hour.

76. When the Defendant was then interviewed under caution he answered "No comment" to all questions asked of him. DSupt Fulcher stated that this surprised, annoyed and frustrated him because he had assumed that the Defendant would continue to talk to the interviewing officers in the same way he had earlier spoken to him, and that the information he had given to DSupt Fulcher would be subsumed in the formal interviews. He referred at one point to the Defendant being given "foolish legal advice".

77. This, then, is the relevant factual background to the Defence application at this voire dire.

The Issues

78. Mr Latham's essential submission is that there were, in this case, fundamental breaches of both Section 76 and the PACE Codes, so that Section 78 is engaged by both and the breaches taken together render inadmissible all the evidence of events during the whole of the period between this Defendant's arrest at 11:06 on 24 March and his arrival at the police station four hours later at 15:15.

79. The relevant statutory provisions are as follows.

Section 76

80. Section 76 of the Police and Criminal Evidence Act 1984 (PACE), relating to confessions, provides so far as is relevant:

> "(1) In any proceedings a confession made by an accused person may be given in evidence against him in so far as it is relevant to any matter in issue in the proceedings and is not excluded by the court in pursuance of this section.
>
> (2) If, in any proceedings where the prosecution proposes to give in evidence a confession made by an accused person, it is represented to the court that the confession was or may have been obtained-
>
> (a) by oppression of the person who made it; or
>
> (b) in consequence of anything said or done which was likely, in the circumstances existing at the time, to render unreliable any confession which might be made by him in consequence thereof,
>
> the court shall not allow the confession to be given in evidence against him except in so far as the prosecution proves to the court beyond reasonable doubt that the confession (notwithstanding that it may be true) was not obtained as aforesaid.
>
> …
>
> (5) Evidence that a fact to which this subsection applies was discovered as a result of a statement made by an accused person shall not be admissible unless evidence of how it was discovered is given by him or on his behalf.
>
> (6) Subsection (5) above applies-
> (a) to any fact discovered as a result of a confession which is wholly excluded in pursuance of this section; and
> (b) to any fact discovered as a result of a confession which is partly so excluded, if the fact is discovered as a result of the excluded part of the confession."

81. The term "oppression" and the test to be applied in considering oppression or "improper compulsion", as it is sometimes described, has been considered in a number of well-known authorities. It has most recently been addressed by the House of Lords in **Rv. Mushtaq** [2005] 2 Cr.App.R. 32. Lord Carswell referred in his speech to the way that the rules relating to the admissibility of confessions had been kept under review over the years in order to "ensure that they reflect the standards accepted by each generation". In addition to the risk of unreliability, he referred to two further factors which had more recently influenced the law in rejecting confessions obtained by compulsion, namely "the right against self incrimination and the need to exercise a degree of controlling discipline over undesirable police practices".

82. At paragraph 64 of his speech he said as follows, in referring to Section 76:

> "64 Oppression is not defined in PACE but its meaning has been discussed in a number of decided cases … For present purposes I am content to use the definition propounded by Lord MacDermott in an address to the Bentham Club in 1968 and adopted by the Court of Appeal in R. v Prager (1972) 56 Cr.App.R. 151 at 161, [1972] 1 W.L.R. 260 at 266:
>
> > '…questioning which by its nature, duration or other attendant circumstances (including the fact of custody) excites hopes (such as the hope of release) or fears, or so affects the mind of the subject that his will crumbles and he speaks when otherwise he would have stayed silent.'"

Section 78

83. Section 78, providing for the exclusion of unfair evidence, provides:

> "(1) In any proceedings the court may refuse to allow evidence on which the prosecution proposes to rely to be given if it appears to the court that, having regard to all the circumstances, including the circumstances in which the evidence was obtained, the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it."

The Code of Practice for the Detention, Treatment and Questioning of Persons by Police Officers

84. This Code applies to people in police detention after midnight on 31 January 2008. Of relevance to this case are the following provisions:

> "**C:6 Right to legal advice** [9]
>
> ***(a) Action***
>
> C:6.1 Unless *Annex B* applies, all detainees, (must be informed that they may at any time consult and communicate privately with a solicitor, whether in person, in writing or by telephone, and that free independent legal advice is available.
>
> …
>
> C:6.4 No police officer should, at any time, do or say anything with the intention of dissuading a detainee from obtaining legal advice.
>
> C:6.5 The exercise of the right of access to legal advice may be delayed only as in *Annex B.* Whenever legal advice is requested, and unless *Annex B* applies, the custody officer must act without delay to secure the provision of such advice.
>
> C:6.6 A detainee who wants legal advice may not be interviewed or continue to be interviewed until the have received such advice unless: …
>
> (b) an officer of superintendent or above has reasonable grounds for believing that:

(i) the consequent delay might:

- lead to interference with, or harm to, evidence connected with an offence;
- lead to interference with, or physical harm to, other people;
- lead to serious loss of, or damage to, property;
- lead to alerting other people suspected of having committed an offence but not yet arrested for it;
- hinder the recovery of property obtained in consequence of the commission of an offence.

(ii) when a solicitor, including a duty solicitor, has been contacted and has agreed to attend, awaiting their arrival would cause unreasonable delay to the process of investigation.

…

C:6.7 If *paragraph 6.6(b)(i)* applies, once sufficient information has been obtained to avert the risk, questioning must cease until the detainee has received legal advice unless *paragraph 6.6(a), (b) (ii), (c) or (d)* applies.

C:10 Cautions

(a) When a caution must be given

C:10.1 A person whom there are grounds to suspect of an offence, see *Note 10A*, must be cautioned before any questions about an offence, or further questions if the answers provide the grounds for suspicion, are put to them if either the suspect's answers or silence, (i.e. failure or refusal to answer or answer satisfactorily) may be given in evidence to a court in a prosecution. A person need not be cautioned if questions are for other necessary purposes, e.g.:

(a) solely to establish their identity or ownership of any vehicle;

(b) to obtain information in accordance with any relevant statutory requirement...

C:10.3 A person who is arrested, or further arrested, must be informed at the time, or as soon as practicable thereafter, that they are under arrest and the grounds for their arrest, see paragraph 3.4, *Note IOB* and *Code G, paragraphs 2.2 and 4.3.*

C:10.4 As per *Code G, section 3,* a person who is arrested, or further arrested, must also be cautioned unless:

(a) it is impracticable to do so by reason of their condition or behaviour at the time;
(b) they have already been cautioned immediately prior to arrest as in *paragraph 10.1.*

(b) Terms of the cautions

C:10.5 The caution which must be given on:

(a) arrest;
(b) all other occasions before a person is charged or informed they may be prosecuted, see *section 16,*

should, unless the restriction on drawing adverse inferences from silence applies, see *Annex C,* be in the following terms:

"You do not have to say anything. But it may harm your defence if *you do not mention when questioned something which you later rely on in Court. Anything you do say may be given in evidence. "*

C:10.8 After any break in questioning under caution the person being questioned must be made aware the remain under caution. If there is an doubt the relevant caution should be given again in full when the interview resumes. See *Note 1OE*

l0E It may be necessary to show to the court that nothing occurred during an interview break or between interviews which influenced the suspect's recorded evidence. After a break in an interview or at the beginning of a subsequent interview, the interviewing officer should summarise the reason for the break and confirm this with the suspect.

C: I I Interviews – general

(a) Action

C:11.1 A An interview is the questioning of a person regarding their involvement or suspected involvement in a criminal offence or offences which, under *paragraph 10.1,* must be carried out under caution.

C:1 I .1 Following a decision to arrest a suspect, they must not be interviewed about the relevant offence except at a police station or other authorised place of detention, unless the consequent delay would be likely to:
(a) lead to:

- interference with, or harm to, evidence connected with a offence;
- interference with, or physical harm to, other people; or
- serious loss of, or damage to, property;

(b) lead to alerting other people suspected of committing an offence but not yet arrested for it; or

(c) hinder the recovery of property obtained in consequence of the commission of an offence.

Interviewing in any of these circumstances shall cease once the relevant risk has been averted or the necessary questions have put in order to attempt to avert that risk.

C.1l.2 Immediately prior to the commencement or re-commencement of any interview at a police station or other authorised place of detention, the interviewer should remind the suspect of their entitlement to free legal advice and that the interview can be delayed for legal advice to be obtained, unless one of the exceptions in *paragraph 6.6* applies. It is the interviewer's responsibility to make sure all reminders are recorded in the interview record.

…

C:11.5 No interviewer may try to obtain answers or elicit a statement by the use of oppression. Except as in *paragraph 10. 9* no interviewer shall indicate, except to answer a direct question, what action will be taken by the police if the person being questioned answers questions, makes a statement or refuses to do either. If the person asks directly what action will be taken if they answer questions, make a statement or refuse to do either, the interviewer may inform them what action the police propose to take provided that action is itself proper and warranted.

(b) Interview records

C:11.7 (a)An accurate record must be made of each interview, whether or not the interview takes place at a police station

(b) The record must state the place of interview, the time it begins and ends, any interview breaks and, subject to *paragraph 2.6A*, the names of all those present; and must be made on the forms provided for this purpose or in the interviewer's pocket book or in accordance with the Codes of Practice E or F; …"

85. The following general and long-standing principles which apply in relation to these provisions, as derived from the authorities, are relevant in this case:

(1) Breach of a Code's provision does not lead automatically to exclusion. Rather, where there is a breach, the Judge has a discretion to exclude the evidence.

(2) The breach must be significant and substantial and the more significant and substantial it is the more likely the Judge is to exclude the evidence. A failure to caution in breach of Code C:10.1 will normally amount to a significant and substantial breach of the Code see (*Rv Sparks* [1991] Crim LR 128).

(3) Bad faith or flagrant disregard of the Code's provisions will make exclusion more likely, but there is no requirement for the police to have acted in bad faith before evidence is excluded. Good faith by the police will not excuse serious breaches of the Act and the Codes (see *Rv Alladice* [1987] Cr.App.R. 380)

(4) The test to be applied is the test under Section 78. In applying that test the Judge should have regard to the rationale of the Code's provisions and the extent to which the breach is likely to defeat that rationale.

86. The evidence and the issues overlap in this case and I have had regard to all the facts set out above in deciding each issue, although I deal with each one separately.

87. **<u>Section 76</u>**

The first issue to be decided is whether the Prosecution have discharged the burden of proving beyond reasonable doubt on the evidence that the Defendant's confession to the murder of Sian O'Callaghan in the second urgent interview undertaken by DSupt Fulcher was not obtained by oppression, contrary to Section 76.

88. In submitting, on behalf of the Crown, that it was not, Mr Lawrie QC submits essentially that what happened here could not truly be said to

amount to oppression, or to have induced this Defendant to speak when otherwise he would have not. The exchange between them was relatively short and it was not suggested that DSupt Fulcher's questioning was abrasive or aggressive. He gave a reasonable explanation for his decision to interview the Defendant at Barbury Castle. Whilst not disputing that the officer referred to the Defendant's vilification by the press, Mr Lawrie submits that I must assess these statements in their particular context, having regard to DSupt Fulcher's obligations as he saw them and with the Yeates investigation having preceded Operation Mayan by only a month or so. Whilst Mr Lawrie conceded that these would not be his "choice of words" he suggested that DSupt Fulcher had showed himself to be an officer who had a "robust and no-nonsense approach".

89. Further, he had taken a record keeper (Ms Peach) with him, so that there was no mischief to be attached to his stated aim of eliciting information as to Ms O'Callaghan's whereabouts. Whilst there was therefore a robust use of words the statements and actions of DSupt Fulcher were not designed or intended to be oppressive. The robust nature of the Defendant's arrest was justified in the circumstances and the Defendant was a mature man and not someone who was vulnerable or who displayed any signs of distress.

90. I have considered the evidence and the Crown's written and oral submissions with care, but I find on the evidence that they have not discharged the burden of proving to the required standard that, in the

particular circumstances of this case, this Defendant's confession was not obtained by oppression. I consider, for the following reasons, that it may have been.

91. It is correct that the Defendant is not vulnerable within the conventional sense of that term. It is relevant however that, at midday on 23 March, he was assessed by the officers who conducted the TIE interview with him as under stress, being close to tears and visibly shaking. He was further assessed by DSupt Fulcher and ACC Geenty as a genuine suicide risk, due to the mounting pressure upon him from the media strategy adopted by the police. This was a risk assessment as to his likely state of mind made by very senior and experienced officers, and which prompted the decision to affect his arrest earlier than planned.

92. Entirely properly Mr Latham makes no criticism of the circumstances of the Defendant's arrest. PC Hine had to make a rapid assessment of the risks involved and an arrest which prevented the Defendant gaining access to his vehicle and the possibility of escape was clearly justified. However, the nature of his immobilisation and arrest in a car park, in the presence of members of the public, are part of the factual matrix in this case. Within a short time of his arrest and during the urgent interview he conducted, DC Derrick described his appearance as being "like a rabbit caught in the headlights". Other descriptions of him as being "calm", based on briefer interactions by other officers, do not displace this graphic description of him by an officer who interviewed

him at close quarters for several minutes, as someone who appeared dazed and frozen.

93. Having already been interviewed by two officers in a police car in the car park and then told he was to be taken to the police station, the Defendant's journey there was suddenly interrupted in order for him to be taken to a rural location some distance away, which was in fact wholly unconnected with the scene of any crime in which he had been involved, an event which was itself likely to create pressure and anxiety. Once there he was taken out of the vehicle by DSupt Fulcher for a one-to-one interview which lasted some nine minutes.

94. Despite his repeated requests to be taken to the police station and to speak to a solicitor, DSupt Fulcher, having deliberately decided not to caution him, then sought repeatedly to persuade him to speak. Whilst I accept that the questioning was neither abrasive nor aggressive, the clear picture on the evidence is one of persistent and repeated questioning, the whole purpose of which was to persuade the Defendant to speak when he had clearly indicated that he did not wish to. The clear message being conveyed to the Defendant was that he would be permitted to go to the station and to speak to a solicitor only when DSupt Fulcher decided that he would allow him to do so.

95. Further, and of particular significance in this case, is the fact that as part of his persuasion DSupt Fulcher threatened the Defendant that he was going to speak to the press in an hour's time and that the

Defendant would then be vilified in the press. This threat was repeated at least once and its meaning is clear.

96. Viewing this entire episode, in my judgment it is at least possible that this was questioning which, by it's nature and given all the surrounding circumstances, so affected the mind of this Defendant that he spoke when otherwise he would have stayed silent. For these reasons I find that the Prosecution have not discharged the burden to the criminal standard and the evidence relating to his confession and the location of Ms O'Callaghan's body is therefore inadmissible pursuant to Section 76(2) of PACE.

The Codes

97. The first issue to be decided is whether Code C.11.1 was engaged on the facts of this case.

98. In submitting that it was not Mr Latham points to the references in the policy documents and briefing notes for 23 March to "deposition site" or to finding a "body". He submits that the evidence suggests that, by 13:40 on 23 March, both ACC Geenty and DSupt Fulcher believed that Ms O'Callaghan was already dead and that the strategy was to delay the Defendant's arrest with the prospect of him leading them to the place where he had left her body. The need for an urgent interview under C.11.1 was therefore not established. The reason that the Defendant's arrest was brought forward on 24 March was not a belief

that delay would be likely to lead to physical harm to Ms O'Callaghan, but concern that the Defendant might commit suicide.

99. I cannot accept this submission. Notwithstanding the occasional use of the terms "body" or "deposition site", I accept the evidence of both ACC Geenty and DSupt Fulcher that the entire focus of this investigation was the recovery of Ms O'Callaghan alive. This was a missing person investigation. Intrusive surveillance of the Defendant, the use of search teams and a clear media strategy were all being deployed with this aim. DS Cooper gave advice to DSupt Fulcher about the possibility of an urgent interview with the Defendant on the basis that there was a need to avoid delay likely to cause Ms O'Callaghan physical harm. Other entries in the policy documents reflect this.

100. Whilst I accept that both DSupt Fulcher and ACC Geenty harboured fears that she might be dead, until such time as her body was found the police had to proceed, and did proceed on the basis that she was still alive. In my view the preponderance of the evidence before me demonstrates that Code C.11.1 was engaged.

101. So far as events at Barbury Castle are concerned, I shall summarise the main submissions made by Mr Lawrie on behalf of the Crown. He submits, essentially, that I should have regard to the particular and peculiar context of this case in determining the admissibility of DSupt Fulcher's evidence concerning events after the Defendant's arrest. The decision he took was taken for understandable reasons and

resulted in no significant disadvantage to the Defendant. This was a fast-moving investigation of the utmost gravity and the procedure adopted was dictated by the need to find Ms O'Callaghan. While DSupt Fulcher may be criticised for regarding her life as more important than the Defendant's right to silence he clearly considered the equation, and the balancing exercise to be conducted, before deciding how to proceed. The saving of life is perhaps the primary responsibility of the police. It is not lightly to be thrust to one side.

102. He submits further that Code C.11.1 allows a degree of flexibility. The first urgent interview had not produced results and the qualifying criteria were therefore still extant. There was therefore nothing to prevent a further urgent interview, if the SIO took a different view from that of DS Cooper, which he plainly did. There was a balance to be struck between the rights of the Defendant, the public obligations of the police to investigate a serious crime and understandable concerns for the safety of Ms O'Callaghan. DSupt Fulcher made a judgment call in this respect which was operationally justified in the circumstances.

103. Further, he submits that the decision to conduct this interview at Barbury Castle was an operational decision, chosen for operational reasons and not in order to put pressure on the Defendant. A proper record was kept.

104. In relation to the failure to caution the Defendant, Mr Lawrie realistically accepts not only that a caution was not given, but that a caution should

have been given before this second urgent interview began. The question however is whether that had any impact on the Defendant or caused him any disadvantage. The reason for not giving the caution here was because the Defendant might otherwise have stayed silent. The question to be determined is the extent to which it is permissible to allow a police officer not to caution a suspect where the strategic imperative is the saving of life.

105. In this case Mr Lawrie submits that the Defendant had been given two previous cautions, once on his arrest and then again before the first urgent interview. He was plainly aware of his rights and understood the cautions he had been given. It cannot sensibly be suggested that he had forgotten them. Whilst Mr Lawrie accepts that that does not obviate the need to give the caution, he submits that it does go to the consequences of the failure to give it and therefore to the question of admissibility of the evidence obtained where no caution was given, in particular where there was a most serious offence under investigation.

106. In considering these submissions the starting point is that the Crown accepts, entirely properly, that on the evidence in this case two separate urgent interviews were carried out. In addition, it is common ground on the evidence that, even where Code C.11.1 is engaged, all the other provisions of the Code continue to apply. That includes what Mr Latham referred to as the most fundamental of all Code provisions relating to cautions.

107. The provisions of C.10.1 and C.10.8 are mandatory. A person whom there are grounds to suspect of an offence must be cautioned before any questions about an offence are put to them. After any break in questioning under caution the person being questioned must be made aware that they remain under caution. If there is any doubt the relevant caution should be given again in full when the interview resumes. Failure to caution, even where the police are investigating a very serious offence, but perhaps especially when it is a very serious offence, amounts to a substantial and significant breach of the Code.

108. Nor can C.11.1 be used to deny access to legal advice, save in the very special circumstances relating to unreasonable delay in C.6.6 (b), none of which is applicable in the present case.

109. Under C.11.1 questioning in any of the circumstances referred to shall cease once the risk has been averted, or the necessary questions have been put in order to attempt to avert that risk. In this case, at the end of the first interview, properly conducted under caution and supervised by the experienced tier 5 interview officer, DS Cooper concluded that all the necessary questions had been put to attempt to avert the risk. On his assessment therefore the questioning now had to cease.

110. Whilst I am prepared to accept that, on the facts of this case, it was open to the SIO to take a different view, he was in fact deciding to conduct a second urgent interview. It was therefore mandatory for the

Defendant to be cautioned. At the very least it was necessary for the Defendant to be reminded that he was still under caution.

111. Further, since the purpose of this second interview was to avoid delay in discovering Ms O'Callaghan's whereabouts, this interview could and should have been conducted at the police station. The Defendant was just a short distance away from Gable Cross and could have either been formally processed immediately or detained in a holding area for this purpose.

112. Instead, DSupt Fulcher adopted an approach which I consider was deliberately designed to ensure that the protections to which this Defendant was entitled under the Codes were not afforded to him. His decision not to caution the Defendant was a deliberate one, precisely because the Defendant might have done what he would be told he could do - stay silent. His decision not to take the Defendant to the police station for interview was, as he accepted, because the custody sergeant would have ensured that the Defendant was informed of his rights. On the evidence in this case there is little doubt that the Defendant would have requested a solicitor and there is no basis for suggesting that there would have been any delay in their arrival given that, once a solicitor was contacted, they were able to attend the police station within the hour.

113. Whilst DSupt Fulcher may have considered Barbury Castle to be the place where Ms O'Callaghan was most likely to be, the Defendant's

removal to Barbury Castle, for the purposes of a further urgent interview, would not only have resulted in the placing of additional pressure upon him, but also provided a mechanism for avoiding the Defendant's request for a solicitor being granted, as it would have been had he been in the police station.

114. DSupt Fulcher was of course entitled to his view that Ms O'Callaghan's life was more important than a PACE compliant interview and that the end justified the means. He was fully entitled to make this moral judgment and to adopt an approach designed to secure intelligence and information relating to Ms O'Callaghan's whereabouts. His anxieties in this respect are fully understandable.

115. However, such an approach has clear consequences in relation to admissibility of the information obtained in such circumstances, as evidence in a criminal trial. The Deputy SIO, DI Kirby, was plainly alive to this in advising DSupt Fulcher not to do what he was proposing to do.

116. Further the "interview" which DSupt Fulcher did carry out is, in my view, more accurately to be described as a process designed to persuade. DSupt Fulcher does not deny this. It explains his decision to take only a note-taker with him for recording purposes rather than to ask one of the officers in the area to accompany him. The whole rationale was to persuade the Defendant to speak.

117. Nothing in PACE or the Codes, or in any of the authorities to which my attention was drawn, suggests that these provisions can be ignored because of overriding operational issues of the kind which arose in this case. Mr Lawrie was unable to show me any decided case which assisted his arguments in this respect. The cases to which he did refer, a number of which were "terrorism" cases, where different considerations arise, all turned on their own particular facts. Whilst urgent interviews or "safety interviews" as they were described were considered in **Rv Ibrahim and Others** [2008] EWCA Crim 880, a reading of that case indicates that in fact each interview with the appellants started with a caution. As May LJ pointed out, giving the judgment of the Court (at paragraph 36):

> "The admission of the safety interviews or their fruits, in evidence at a subsequent trial is subject to the ordinary principles governing a fair trial, and the over-arching provisions in Section 78 of the Police and Criminal Evidence Act 1984 (PACE) … As ever these will be fact specific decisions to be made in the overall circumstances of each individual case."

118. For the reasons given above and in respect of Section 76 I do not accept the submission that what happened in this case had no impact upon this Defendant or caused him no disadvantage. These were indeed significant and substantial breaches of the Codes, in circumstances deliberately designed to persuade the Defendant to speak. Further questions were asked, all without caution, during the journey to the location of Ms O'Callaghan's body. Admissibility of this evidence would have such an adverse effect on the fairness of the proceedings that it ought not to be admitted.

Rebecca Godden-Edwards

119. Although I deal with this issue separately, the evidence relating to it is all part of the same series of events, resulting from the deliberate decision of DSupt Fulcher to act as he did. My findings above are all relevant therefore in considering this matter in addition. In particular, the fact that the Prosecution have failed to discharge the burden of proving that there was not oppression in this case is of particular relevance in considering the submissions on admissibility relating to this evidence.

120. Once the Defendant had directed DSupt Fulcher to the location where Ms O'Callaghan could be found, the qualifying criteria for an urgent interview were no longer present. Pursuant to C.10.1, as soon as he started to confess to committing an entirely separate offence he should then have been arrested and immediately cautioned. The planned journey to the police station should then have gone ahead.

121. Instead, DSupt Fulcher asked that they be driven to a quiet place, out of view of any members of the public. He then took the Defendant some distance from the car and conducted a further interview, without caution, as they were sitting on the grass. Further, once back in the car and en route to the next location, a number of further questions were asked, relating both to this incident and to Ms O'Callaghan. At no point was the Defendant cautioned.

122. Mr Lawrie submits that this confession was not the result of any decision to persuade the Defendant to speak. Rather it was an unprompted, entirely spontaneous and "old fashioned" confession. Whilst he accepts that the Defendant should have been cautioned, DSupt Fulcher was entitled to have regard to the "moment in time" and to the need not to "interrupt the flow". These were unique circumstances and the Defendant was keen to tell the police about the murder. He therefore suffered no disadvantage in this respect. This was information he provided entirely voluntarily concerning a murder victim of which the police had no prior knowledge.

123. Mr Lawrie relies in this respect on Lord Steyn's observations as to the triangulation of interest in **<u>Attorney General's Ref No 3 of 1999</u>** [2001] 1CR.App.R 34, as follows:

> "The purpose of the criminal law is to permit everyone to go about their daily lives without fear of harm to person or property. And it is in the interests of everyone that serious crime should be effectively investigated and prosecuted. There must be fairness to all sides. In a criminal case this requires the court to consider a triangulation of interest."

124. He submits that a balance has to be drawn between the competing, triangular interests. In a case where there was no coercion and the Defendant was keen to tell the police what had happened the absence of a caution should not render this evidence inadmissible.

125. I have considered carefully Mr Lawrie's oral and written submissions in this respect, but I cannot accept them. This whole series of events

began with a deliberate decision by a senior officer to breach the Codes and it developed into circumstances where I consider there may have been oppression, for the reasons I have given. Once the Defendant had directed DSupt Fulcher to the place where Ms O'Callaghan could be located, the relevant risk had been averted and the qualifying criteria for an urgent interview under C.11.1 no longer existed. There is no doubt on the evidence that C.11.1 was no longer engaged.

126. In these circumstances, once the Defendant began to refer to another, entirely different offence, it was not legitimate for DSupt Fulcher to decide not to arrest and caution the Defendant, and to decide not to ensure his immediate transport to the police station. His explanation, that he did not want to interrupt the Defendant's flow or lose the moment in time is, in my view, unacceptable. Whilst the initial words from the Defendant may have been unprompted, they arise from what had already passed between them and cannot be viewed in isolation from what had gone before.

127. As soon as he began to talk about another offence it is clear that he should have been cautioned. There should have been no further discussions about it and the Defendant should have been taken to the police station.

128. In any event what happened after the initial, unprompted words was, on analysis, not the voluntary supply of information by this Defendant.

Once in the car there was clearly a further conversation between the two of them, with DSupt Fulcher asking a number of questions concerning the detail of both these cases. It was not therefore an unburdening on the part of the Defendant, as Mr Lawrie sought to characterise it, but a two-way conversation, with the Defendant being asked a number of questions about the offences to which he was referring, all without caution.

129. Once again, whilst DSupt Fulcher was entitled to adopt an approach which would lead to the gathering of intelligence and information, what resulted was not, in my judgment, such as can fairly constitute admissible evidence in a criminal trial. The observations of Lord Steyn in the case referred to were in the context of the enactment of Section 41 of the Youth Justice and Criminal Evidence Act 1999, the aim of which was to protect complainants in sexual offence cases from indignity and humiliating questioning. Lord Steyn was not dealing with a case involving, as here, wholesale and irretrievable breaches of PACE and the Codes in circumstances where the Crown have not discharged the burden upon them under section 76 of PACE.

130. For these reasons, and in the exercise of my discretion under Section 78 admission of the evidence relating to the confession concerning Ms Godden-Edwards and the location of her body, and the circumstances in which they arose, would have such an adverse effect on the fairness of these proceedings that they ought not to be admitted.

131. For all these reasons the application made on behalf of the Defendant at this voire dire is granted.