4; [2005] 1 WLR 1660, Lord Brown of Eaton-under-Heywood put the approach in this way (at para. 31): "Where fresh evidence is adduced on a criminal appeal it is for the Court of Appeal, assuming always that it accepts it, to evaluate its importance in the context of the remainder of the evidence in the case. … The primary question is for the court itself and is not what effect the fresh evidence would have had on the mind of the jury. That said, if the court regards the case as a difficult one, it may find it helpful to test its view ?by asking whether the evidence, if given at the trial, might reasonably have affected the decision of the trial jury to convict': R v Pendleton [2002] 1 All ER 524 at [19].

The essential question remains whether, in the light of the fresh evidence, the convictions are unsafe or, as articulated in Lundy (supra) by Lord Kerr (para. 150): "[T]he proper test to be applied by an appellate court in deciding whether a verdict is unsafe or a miscarriage of justice has occurred, where new evidence has been presented, is whether the evidence might reasonably have led to an acquittal."

In the context of this case, it is important to underline that Ryan Brown (whom Cunningham had also identified in circumstances more favourable to those which obtained in relation to the appellant) was acquitted and it is not fanciful to suggest that the evidence relating to what was called gunshot residue was seen by the jury as providing important independent support for the weak visual identification by Cunningham and weak voice recognition by Shaw (to say nothing of playing a part in justifying the conclusion of joint enterprise sufficient to rely on the evidence of Cunningham that the appellant had been named as one who was collecting the gun). The final plank of the prosecution case, namely the background events, provides critical context but is not probative of involvement in murder. In the circumstances, in the light of the new material, we are not prepared to conclude that these verdicts remain safe: the fresh evidence might reasonably have affected the decision of the trial jury.

Mr Wood also seeks leave to appeal on grounds relating to the admissibility of the evidence of voice recognition and the adequacy of the direction in relation to that evidence. As to admissibility, the issue was decided against the appellant in the first appeal and we see no reason to depart from that conclusion. Dealing with the approach of Penry-Davey J, although we recognise that the approach to such material is now identified in R v Flynn and St John (supra), we are satisfied that, in the circumstances of this case, the direction was sufficient: he indicated that increased caution was required with voice identification, and highlighted the specific weaknesses.

Conclusion: Having admitted the evidence of Ms Shaw, we have concluded that it might reasonably have affected the decision of the trial jury so that these convictions are no longer safe; in the circumstances, the appeal is allowed and the convictions quashed. In addition to expressing our gratitude to the Criminal Cases Review Commission, we pay tribute to the work of the Innocence Project and Pro Bono Unit at Cardiff Law School, which took up the appellant's case and pursued it so diligently.

Hostages: Jamie Green, Dan Payne, Zoran Dresic, Scott Birtwistle, Jon Beere, Chedwyn Evans, Darren Waterhouse, David Norris, Brendan McConville, John Paul Wooton, John Keelan, Mohammed Niaz Khan, Abid Ashiq Hussain, Sharaz Yaqub, David Ferguson, Anthony Parsons, James Cullinene, Stephen Marsh, Graham Coutts, Royston Moore, Duane King, Leon Chapman, Tony Marshall, Anthony Jackson, David Kent, Norman Grant, Ricardo Morrison, Alex Silva,Terry Smith, Hyrone Hart, Glen Cameron,Warren Slaney, Melvyn 'Adie' McLellan, Lyndon Coles, Robert Bradley, John Twomey, Thomas G. Bourke, David E. Ferguson, Lee Mockble, George Romero Coleman, Neil Hurley, Jaslyn Ricardo Smith, James Dowsett, Kevan Thakrar, Miran Thakrar, Jordan Towers, Patrick Docherty, Brendan Dixon, Paul Bush, Frank Wilkinson, Alex Black, Nicholas Rose, Kevin Nunn, Peter Carine, Paul Higginson, Thomas Petch, John Allen, Jeremy Bamber, Kevin Lane, Michael Brown, Robert Knapp, William Kenealy, Glyn Razzell, Willie Gage, Kate Keaveney, Michael Stone, Michael Attwooll, John Roden, Nick Tucker, Karl Watson, Terry Allen, Richard Southern, Jamil Chowdhary, Jake Mawhinney, Peter Hannigan, Ihsan Ulhaque, Richard Roy Allan, Carl Kenute Gowe, Eddie Hampton, Tony Hyland, Ray Gilbert, Ishtiaq Ahmed.

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MOJUK: Newsletter Inside Out' No 507 (11/12/2014)

Public Protection Sentences *House of Lords / 3 Dec 2014 : Column 1317*

Tariff expiry date passed: 3,633 of these 600 prisoners have been in for eight years when they might have expected to be out after two years

Lord Lloyd of Berwick: To ask Her Majesty's Government what is their response to the recent decision of the High Court in Fletcher and others v Governor of HMP Whatton and the Secretary of State for Justice that the Secretary of State is in breach of his public law duty in relation to the continued detention of prisoners detained under imprisonment for public protection sentences.

Minister of Justice Lord Faulks: The court did not find any breach of public law duty with respect to the continued detention of those serving imprisonment for public protection—IPP—sentences. The court did, however, find that the Secretary of State was in breach of his public law duty in relation to the provision of resources for the Healthy Sex Programme, a course designed for certain serious sex offenders. The Secretary of State has committed the additional funding necessary to remove the current backlog for places on the Healthy Sex Programme.

Lord Lloyd of Berwick: The only defence to these proceedings was that the Lord Chancellor could not provide the courses that these prisoners needed to go on in order to come before the Parole Board because he did not have enough money. Does the Minister agree that if the Lord Chancellor were to exercise the power that he already possesses to change the release test for these prisoners, he could release forthwith up to 650 prisoners who were given tariff sentences of less than two years—some as little as three months—eight years ago, thereby saving £24 million a year that could then be spent on providing courses for the other prisoners who are waiting to go on them? Why has he not exercised that power?

Lord Faulks: The learned Lord has asked me this question before and I congratulate him on his tenacity. There are no current plans to review the release test. The release test is determined by the Parole Board. It decides when someone is safe to release. Attendance on courses can be evidence of their suitability for release. They can be released without attendance on the courses and attendance on the courses does not necessarily qualify them for release.

Lord Wigley: Is it not totally unacceptable that 600 people should be in for eight years when they might have expected to be out after two years; that, had this happened before IPP came in, they would not be in these circumstances; and that, if their cases were to arise today, they would not be in these circumstances? It is totally invidious that they should be locked up in this way and that the Government should allow this to happen.

Lord Faulks: That ignores the particular judgment exercised by a judge when sentencing an individual. We do not know precisely what the sentence would have been with the current sentencing powers. Of course, the party opposite introduced IPP sentences. There are now different sentences. These individuals were sentenced to IPP sentences because the judges considered that they represented a potential danger to the public. The Government have to bear that in mind.

Lord Beecham: The Government's response to the judgment is welcome in that they are now providing resources for sex offenders, but what has happened in relation to other offenders for whom courses have also been unavailable? How many such prisoners are awaiting courses? What would be the cost of dealing with the backlog and what is the cost of failing to do

so in terms of having to continue to house these people in Her Majesty's prisons?

Lord Faulks: The Government have increased the number of commissioned completions of courses in relation to the core sexual offenders course and in relation to the healthy sex course. The party opposite has adopted a surprising posture. We are doing our best to clear up some of the mess caused by the IPP sentence. We are clearing it up in a responsible way. We are making sure that courses are made available where they can be, where there are suitably qualified people to provide them, but not releasing dangerous prisoners into the population.

Lord Elystan-Morgan: Does the Minister accept that Mr Justice Dingemans, sitting a month ago in the Queen's Bench Division in this case, made it clear that he found that the Lord Chancellor had deliberately abandoned—indeed reneged upon—his obligation in relation to providing courses and that it was not a matter of whether the resources were available but of whether a reasonable level of resources was provided for these courses, which were part and parcel of the judgment in relation to an indeterminate sentence? Furthermore, he found that the Lord Chancellor had habitually ignored his obligation over the years. Lastly, in adjourning the issue of relief for the claimants, he said that he would adjourn the matter in order to see what the attitude of the Lord Chancellor would be towards his duties. Can the Minister tell us what the Lord Chancellor's reply is going to be?

Lord Faulks: The Answer I gave to the first Question was that the Secretary of State has committed the additional funding necessary to remove the current backlog for this programme. The noble Lord's interpretation of the judgment of Mr Justice Dingemans, which he has in front of him, is one which he might arrive at. The judge decided that the Secretary of State should have provided these courses. It has to be said that all those individuals had already been on a core offending course. The noble Lord will have read the history of these offenders and will realise that the Parole Board would have been extremely concerned before releasing any of them.

Lord Bishop of St Albans: Does the Minister agree that since the abolition of IPP sentences nearly three years ago Her Majesty's Government have a particular responsibility to these prisoners, especially when their tariff is now well past, in order to reduce the risk of reoffending? Can Her Majesty's Government assure us that there are sufficient specialist resources for prisoners who are not necessarily able to go on some of the courses because of particular needs, such as learning difficulties or perhaps because they have English as a second language? Will these people be given the help that they need so that they can be released and returned to society to make a contribution for the general good?

Lord Faulks: We are aware of our obligation. NOMS has invested a considerable amount in a number of interventions. We are doing our best to provide a variety of courses in order to ensure that they have the opportunity of showing that they are ready for release.

Lord Marks: This Government abolished new IPPs and at the same time introduced a power for the Secretary of State to change the release test. This matter has been raised endlessly in debate and in Questions. Can my noble friend now try to provide some justification for not implementing the power so as to ensure that prisoners whose release would be safer are released quickly?

Lord Faulks: I refer the House to the answer I gave to Lord Lloyd.

Immigration Judge Peter Hollingworth Faces Race Remark Investigation

An immigration and asylum tribunal judge is being investigated over a remark he is alleged to have made about an Asian witness in a harassment case. During a hearing in Preston, Peter Hollingworth was reported to have said to a prosecutor: "With a name like Patel she can only be working in a corner shop or off-licence." Mr Hollingworth has resigned his post as a deputy district judge. He is also currently "refraining" from tribunal duties, the judiciary said.

Turning to the first ground of appeal, the appellant submits that this case is on all fours with R v George (Barry), where excessive weight was placed on a single particle of gunshot residue. The Crown submit that the better parallel is R v Joseph, where evidence of low levels of gunshot residue was admissible being specifically accorded appropriate (and not excessive) weight. As the appellant submits, there is only one more characteristic particle than in R v George (Barry). However, it is clear from R v Joseph that the task for this court is not merely quantitatively to apply the 2006 Guidelines, which have no force in law but are indicative only of the current state of the science.

In our judgment, there is no basis for challenging the decision of the trial judge to admit the evidence of gunshot residue and neither does the new evidence provided by Ms Shaw justify such a view. The fact that scientists have adopted a cautious approach to reporting low levels of residue (i.e. 1-3 particles) such that for that residue, on its own, no evidential significance can be attached to it does not mean that the evidence is necessarily inadmissible or irrelevant. Still less is that the case when (as here) there were in fact a total of four recovered particles, albeit that two are characteristic of gunshot residue and two indicative only (to say nothing of the additional particle found by Ms Shaw). The jury are more than able to assimilate evidence as to potential significance or lack of significance of recovered evidence, provided that there is an appropriate explanation of that potential significance, for example, by reference to what might occur in the environment or might otherwise be the consequence of entirely innocent contamination.

The importance of this point can be illustrated by reference to the forensic value of the absence of evidence. Whereas it is correct to say that absence of evidence is not the same as evidence of absence, the failure to recover anything that could even remotely be consistent with gunshot residue might provide a forensic argument supporting the proposition that involvement in the discharge of a firearm is disproved by the absence of particles that could be gunshot residue. The submission that the evidence now available demonstrates that the original forensic evidence should not have been placed before the jury is rejected.

Turning to the summing up, Penry-Davey J provided what appears to be a clear, balanced account of the evidence, underlining the various innocent explanations that Mr Collins had conceded during the course of his evidence for the presence of the particles on the coat found at the appellant's home. As we have explained, he had specifically left open the possibility that the particles had no significance. On the other hand, however, he did not differentiate between the nature of or value to be attached to the different particles (whatever Mr Collins might have said) and referred to gunshot residue as potentially supportive of a conclusion of joint enterprise sufficient to justify reliance on Cunningham's account that he was told that the appellant would collect the gun. Similarly, he referred to this evidence as potentially independent support for Shaw's evidence to that effect that he recognised the appellant's voice.

While we endorse Mr Whittam's broad proposition that the change of approach to evidence of gunshot residue does not necessarily determine the appeal, had the present scientific concerns explained by Ms Shaw been available to the judge, we have no doubt that his directions would have been couched in terms of much greater circumspection and caution. The particles of gunshot residue may well be consistent with the appellant's participation in the murder but, at the very least, the extent (if it got that far) to which they could provide positive corroboration would now have required much more detailed analysis of the science and the evidence.

The approach to the impact of fresh evidence (such as Ms Shaw provides) is identified in a well-trodden line of authority, ranging from Stafford v DPP [1974] AC 878 to the recent decision in Lundy v The Queen [2013] UKPC 28. Thus, in Dial and anor v State of Trinidad and Tobago [2005] UKPC

regard, she noted that there had been shooting incidents on 30th April 2001 (following which George was arrested but not charged) and at the Museum public house (in respect of which Ryan Brown and Kevin Faulkner were arrested but not charged). If George had been arrested by armed police officers, they could have had residue on their hands and clothing which could have transferred to his clothing. Suffice to say, it was not possible to conclude that the particles must be related to this particular shooting. We add only that it is unclear (but we doubt) whether there was any evidence of these other incidents before the court.

R v George (Barry) concerned the murder of Ms Jill Dando. A significant finding was the presence of a single particle of firearms discharge residue in the internal right pocket of a coat found hanging on the kitchen door of that appellant. It was a particle that contained the same constituent elements as discharge residue in a cartridge case found at the scene of the shooting and on the victim's hair. It is clear that considerable significance was attached to this single particle. As was underlined in this court (see [2007] EWCA Crim 2722 per Lord Phillips of Worth Matravers CJ at para. 51): "It is clear from these extracts [from] the summing up that the jury were directed that the evidence of Mr Keeley and Dr Renshaw provided significant support for the prosecution's case that the appellant had fired the gun that killed Miss Dando. The judge did not consider that their evidence on this topic was "neutral". In this he was correct and his summary is a model reflection of the evidence that had been called. In reality, when considered objectively, that evidence conveyed the impression that the Crown's scientists considered that innocent contamination was unlikely and that, effectively in consequence, it was likely that the source of the single particle was the gun which killed Miss Dando. In that respect their evidence at the trial was in marked conflict with the evidence that they have given to this court with the result that the jury did not have the benefit of a direction that the possibility that the [firearms discharge residue] had come from the gun that had killed Miss Dando was equally as remote as all other possibilities and thus, on its own, entirely inconclusive. In the light of the way in which Mr Keeley now puts the matter, we have no doubt that the jury were misled upon this issue."

That case was considered in R v Joseph [2010] EWCA Crim 2580 which was another murder which depended on a substantial body of circumstantial evidence: without seeking to be exhaustive, this included the recovery of the murder weapon and gunshot residue in a car which could be linked to Gavin Dean Abdullah, a man to whom that appellant could himself be linked through documents found at his home. Also in a bedroom at his home, there was found a single particle of what could be gunshot residue in a pocket of each of two motorcycle jackets and on a glove: they were of different types and concessions were made by the forensic scientist in that case as to secondary transfer such that the defence expert was not called. The case was left to the jury on the basis that the prosecution argued that the particle from the left glove was "capable of having come as discharge residue from the murder weapon" but also that the defence case was that "particles can easily be transferred from one surface to another. All it needs is a hand, a glove, a coat sleeve. Anything could transfer the particle".

Although it was argued that the case was similar to George (Barry), this court rejected the notion that the jury had been misled. Pitchford LJ put it (at para 28): "We entertain no doubt that the jury was perfectly well aware that the [gunshot residue] evidence was not capable of proving that the applicant had fired the murder weapon. However, any evidence which was capable of linking the applicant with the gun bag was an important part of the circumstantial case associating the applicant with Abdullah. The fact the bag itself belonged to the applicant was plainly relevant. As we have observed, the applicant eventually gave evidence of that association, an explanation which it was for the jury to evaluate."

Pre-Charge Bail: More Than 70,000 Languishing In 'Legal Limbo' *Bracken Stockley*

In Scotland, the US and other countries police bail does not exist. Suspects are either charged or, if the evidence is insufficient, the person is freed. In an open letter sent to the Daily Telegraph and Guardian this week, signatories across the political spectrum, including the www.thejustice-gap.com, have called upon the government to reform police bail. There is currently no limit on the length of time police can place someone on pre-charge bail and so people have no rights of protest and are at the mercy of the police force that arrests them. Introduced 30 years ago, in the Police and Criminal Evidence Act 1984; pre-charge bail is imposed by the police, at an officer's discretion, without independent oversight and with no right of appeal.

The open letter reads: Pre-charge bail was introduced 30 years ago to limit the freedom of individuals while police conducted further investigations. No restriction was put on the amount of time police can hold someone on pre-charge bail. It has led to a perversion of justice where today more than 70,000 people are languishing on a form of legal limbo in England, Wales and Northern Ireland. More than 5,000 of those have been on police bail for more than six months. Innocent people have been left on pre-charge bail for years before their cases have been dropped or thrown out of court. This is a scandal. Those on it have their careers put on hold. The mental anguish of not knowing what will happen to them is in itself a form of punishment without trial: the weight of suspicion grows heavier with each day. There is no right of appeal. All these individuals are innocent until proven guilty. It is a fundamental axiom that justice delayed is justice denied. Home secretary Theresa May has called for a time limit. We believe it should be a maximum 28 days, reviewed by a judge and not by police. We welcome her words of support. Words must be turned into action. The government must act swiftly to right this wrong and we ask all political parties to strongly consider putting a 28-day limit on pre-charge bail at the centre of their general election manifestos.

Signed by Nigel Evans MP (Con); Eddy Shah; David Davis MP (Con); Caroline Lucas MP (Green); Baroness Butler-Sloss (Crossbench); Lord Black of Brentwood (Con); Baroness Kennedy of The Shaws (Lab; Lord Paddick (Lib Dem); Frances Cook, Howard League for Penal Reform; Lord Finkelstein (Con); Dominic Raab MP (Con); Janet Street Porter; John Hemming MP (Lib Dem); Gavin Millar QC; Roy Greenslade; Jon Robins, editor, Justice Gap; Sir Edward Garnier QC MP (Con); Renate Samson, chief executive, Big Brother Watch; Steven Barker; Matthew Elliott, chief executive, Business for Britain; Peter Tatchell; Andy McNab; Lord Craig of Radley, former RAF Marshal and chief of defence staff; Baroness Jones of Moulsecoomb AM (Green); Andrew Caplen, president, Law Society; Milos Stankovic; and Graham Stringer MP (Lab)

Freddie Starr is among some of the well known public figures who were on police bail for many months before the police decided to take no action against them. In a Justice Gap article published earlier this year regarding Starr's case, the defence lawyerGreg Foxsmith, posed the question: how can it be right to be on bail for 19 months? Foxsmith reflected that it might be a 'surprise' to journalists, commentators and the public that someone arrested and released by police on bail for further investigation can remain in limbo for months, even years however it was 'no surprise' for criminal practitioners. 'Sadly, it has become increasingly normal for lengthy periods of time on bail, often subject to onerous bail conditions.'

Some of these 'onerous' conditions that Foxsmith referred to included individuals being banned from leaving the country, using the Internet or traveling on public transport. Police could restrict their movements, remove passports, take away computers and mobile phones and even suspend their bank accounts. Many people were suspended from their jobs while

on bail and police could do all this without needing to seek permission from a court. A recent study revealed that 5,930 people in England and Wales have spent more than six months on pre-charge bail. Some have spent three years on bail.

Human rights campaigner; Peter Tatchell, one of the co-signatories to the letter, wrote for the Huffington Post that people on police bail often found the conditions imposed 'turn their lives upside down, physically and emotionally'. 'The mental anguish of not knowing what will happen to them is, in itself, a form of punishment without trial,' he said. The 'weight of suspicion grows heavier with each day that bail conditions remain in force. Victims feel stigmatised. It is a fundamental legal axiom that justice delayed is justice denied. Peter Tatchell

The journalist Roy Greenslade described the long periods of police bail as a 'disgrace in a democratic society' (here). Richard Garside, director of the centre for crime and justice studies, told BBC2's Newsnight on Monday, that police bail had 'morphed into police officer justice' in which police can restrict people's liberties and freedoms prior to any charge being brought. And 'all too often' there is no charge. Greenslade argued that suspects felt intimidated by being on bail and it could be used as a way of pressuring people to confess despite their innocence.

109 Women Prosecuted for False Rape Claims in Five Years *Sandra Laville, Guardian*

At least 109 women have been prosecuted in the last five years for making false rape allegations in the UK, according to campaigners who are calling for an end to what they claim is the aggressive pursuit of such cases. In 2012/13 there were 3,692 prosecutions for rape in England and Wales, resulting in 2,333 convictions. The charity Women Against Rape (War) is taking its campaign to the House of Commons, where some of those who have been jailed for lying about rape allegations will speak out against their treatment by the authorities. War says it is supporting several women who say they were forced into retracting their rape complaint by police and then told they would be prosecuted for perverting the course of justice.

The vast majority of the convictions in the last five years, 98 out of 109, involved prosecutions for perverting the course of justice – which carries a maximum life jail term – rather than the lesser offence of wasting police time, which has a maximum tariff of six months in prison or a fine. A US law professor, who will be speaking at the Commons, said the UK's stance on false allegations is more aggressive than in countries such as the United States, Canada and Australia. Prof Lisa Avalos, of the University of Arkansas, said false allegations in the US were dealt with as a misdemeanour offence, not a felony – and most women were not jailed if found guilty. "In the course of my research I have not found any country that pursues these cases against women rape complainants in the way the UK does. The UK has an unusual approach and I think their approach violates human rights," she said.

But Prof Claire Ferguson, a forensic criminologist from the University of New England in New South Wales, Australia, said it was not the norm to prosecute women for false allegations and that only those in the most egregious cases were charged, often where the accused man had spent time in custody. "There have been cases in Australia where people have been accused, then nothing ever happens to the accuser, even though the police believe the report is indeed false. This can be hugely problematic and has led to many personal and professional issues for the accused [including suicide], even when the police have proven that they did nothing wrong and are not a sex offender," she said.

Sandra Allen's daughter Layla Ibrahim was seven months pregnant when she was jailed for three years for perverting the course of justice, after reporting a sexual assault by two

that the trial judge gave clear warnings as to its treatment. He emphasised the weakness of both that identification and the visual identification. It is submitted, therefore, that neither ground undermines the safety of these convictions.

The Significance of Particles of Gunshot Residue - Mr Whittam does not oppose the application to admit the evidence of Ms Shaw and there is no doubt that the 2006 Guidelines (updated in 2009 but with no material difference to this case) do provide new material as representing a change in scientific thinking on the significance of gunshot residue. Although we are both mindful of and share the cautious approach to fresh expert evidence (see R v Jones [1997] 1 Cr App R 86), in the circumstances of this case, we admit it and turn to consider its impact in this case and, in particular, the extent (if at all) to which it affects the safety of the conviction.

The 2006 Guidelines identify ammunition types, how particles are formed in the discharge of a firearm (including other possible sources of such particles such as fireworks, nail guns and brake linings) and the possibilities of secondary transfer. It classifies the number of gunshot residue primer particles into reporting levels of 'low' (1-3 particles), 'moderate' (4-12 particles); 'high' (13-50 particles) and 'very high' (greater than 50 particles) and contains the following advice in relation to reporting single particles and low levels of residue (at para. 9.5): "Any positive finding must be declared in the statement and a comparison of the composition or type can be carried out mostly for the purposes of elimination. Other than this, very little in the way of interpretation can be applied to finding LOW levels of residue because of the lack of relevant background data on residue in the external environment. Whilst the presence of residue in the environment is considered to be extremely rare, persons who associated with firearm users might unknowingly and unwittingly pick up the odd particle of residue. This is the so called "lifestyle" issue ... Case work experience of searching through whole wardrobes of clothes shows that single particles are occasionally detected. Single particles present a particular problem being the smallest detectable amount of residue it is possible to find. A single particle is defined as one particle found on an item or group of items from a single source, e.g. samples and clothing from a suspect all taken at the same time. Unfortunately, it is not possible to say when or how single particles were deposited. It cannot be determined if they are the last remains of some prior association with firearms, or whether they have been deposited quite recently from some likely contaminated source. ... There is no sufficient data on the environmental occurrence of FDR to give a safe interpretation of finding a single particle of residue. Consequently the FSS has adopted a cautious approach to reporting LOW levels of residue and no evidential value can be offered. From an investigative point of view LOW levels of residue may nonetheless have some value; for example, finding a low levels on a discarded item such as a glove may give a significant lead to a police investigation. When an officer is given information on low levels in an investigative submission he must be made aware that in most cases it is unlikely any evidential weight can be attached to the findings."

Against this forensic background, Ms Shaw analysed the findings (and re-examined the coat). She found that only the two particles on the coat containing lead, barium, and antimony could be said to be characteristic of gunshot residue. The two particles containing barium and aluminium were indicative of gunshot residue, but could also have originated from other sources, such as fireworks. An additional indicative particle containing barium and aluminium was found on the front of the coat. This also could not be said to be gunshot residue.

Applying the 2006 Guidelines, Ms Shaw considered that very little by way of interpretation could be applied to finding such low levels of gunshot residue, not least because of the lack of background data on residue in the external environment. She concluded that the particles could be related to a shooting; or to the dummy cartridge; or picked up unknowingly from the environment. In that

dence for you to consider in the case. And you will no doubt take into account the points that have been made, both on behalf of the Crown in respect of that evidence and on behalf of the defence, as to its significance, if any, in this case."

The words "if any" at the conclusion of that summary make it clear that the judge did not exclude the possibility that the jury would not find the particles of any value.

The First Appeal: As mentioned above, the appellant's renewed application for leave to appeal against conviction came before the full court on 25th May 2004. His appeal was heard alongside that of Brown, who was given leave to appeal on the basis of the inconsistency of the jury's verdicts. The appellant's appeal focused on the nature of the evidence at trial. Counsel submitted that Penry-Davey J erred in admitting Mr Loftus' conviction; in admitting the evidence of Cunningham that Loftus had said that the appellant was coming to pick up the gun; in leaving the evidence of Cunningham to the jury (because of the circumstances and the absence of an identification parade); in failing to exclude the evidence of Shaw of voice recognition; and in refusing to accede to the submission that there was no case to answer. In dismissing the appeal, the court found that Penry-Davey J had correctly identified the legal principles and had decided each issue within the entirely legitimate bounds of his discretion. The evidence was such that the jury was able to consider it, subject to appropriate and robust direction. Such a direction had been given.

The Present Proceedings: The appellant's first application to the CCRC was dated 16th February 2005 at which time no basis upon which to refer the conviction to this court could be discerned. The current application (received 23rd July 2010) is primarily based on a scientific re-evaluation of the significance of gunshot residue generally as a result of which, on 19th July 2006, the FSS issued guidelines on 'the assessment, interpretation and reporting of firearms chemistry cases' ("2006 Guidelines"). This document deals with the prevalence of small numbers of particles of gunshot residue with the result, so it is argued, that the number and type of particles of residue found on the coat were so small so as to be at or near the level at which they could not be considered to have evidential value. Parallels were drawn with the analysis in R v George (Barry) (supra). Having obtained fresh evidence in the form of an expert report prepared by Miss Angela Shaw, the CCRC decided to refer the case back to the court on this basis, reflecting that this court could conclude that the weight of the gunshot residue evidence was not such as supported the identification evidence.

This ground of appeal is formulated by the proposition that the gunshot residue evidence should not have been admitted before the jury. Alternatively, it is argued that Penry-Davey J failed to give what would now be an appropriate warning relating to the limited significance that could be attached to such evidence.

The CCRC declined to refer the convictions on the further ground that a re-analysis of the CCTV to demonstrate that the description of the witnesses was inconsistent with an assailant being the appellant. Nevertheless, the case having been referred, on his behalf, Mr James Wood Q.C. seeks leave further to argue that the conviction is unsafe because the voice identification evidence of Stuart Shaw should not have been given in evidence or, alternatively, following R v Flynn and St John (supra), which post-dated the appeal, the trial judge failed to give a warning appropriate to the voice identification evidence.

Mr Richard Whittam Q.C. for the Crown recognises that there has been a change of approach to evidence of gunshot residue but argues that this change does not necessarily determine the appeal. It is not suggested that gunshot residue evidence is of no value at all and, furthermore, it was clear that from the evidence at the trial that the presence of the gunshot residue could be explained in a variety of ways. As to voice identification, it is argued

strangers. “My daughter still maintains she was attacked,” said Allen, who will be addressing the public meeting. “We found out that within days of her reporting the attack the police started investigating my daughter. “The police trot out these words that victims will be believed but I don’t think they ever bothered investigating what Layla was saying from the beginning. I will fight for her innocence to my dying day. What happened to her was beyond horrific, she suffered that night, she suffered in prison and she is still suffering.”

Ibrahim’s lawyer, Nigel Richardson, is preparing to submit her case to the Criminal Cases Review Commission, which pursues miscarriages of justice. He said: “These cases seem to be pursued with a particular vehemence by the police and CPS [Crown Prosecution Service]. It’s as though lying to the police, as they would see it, demands a really heavy reaction. There comes a moment when the woman goes from being a victim in the eyes of the police to a suspect. She may not even know that has happened.”

Recent figures from Her Majesty’s Inspectorate of Constabulary, the police watchdog, revealed that more than a quarter of rape and sexual offences were not being recorded as crimes by forces and rape is a hugely under-reported offence. Campaigners say that context has to be taken into account when police and prosecutors decide to pursue women for apparently lying about sexual attacks. The director of public prosecutions, Alison Saunders, is scheduled to publish a statement on the case of Eleanor de Freitas, a rape complainant who killed herself on the eve of a prosecution for perverting the course of justice.

Lisa Longstaff, from War, said: “It’s appalling that when over 90% of rapists are getting away with it and two women a week are killed by partners or ex-partners, women who report violence are being imprisoned. “From Rotherham to Westminster, police dismiss victims and press them to retract their allegations. We have repeatedly raised with the former and present DPP that biased and negligent rape investigations result in miscarriages of justice.”

The CPS said it did not collate figures on how many individuals have been prosecuted for allegedly making false rape allegations. A CPS review over 17 months from January 2011 to May 2012 revealed there had been 44 individuals prosecuted for perverting the course of justice or wasting police time, out of 159 charging decisions. A spokeswoman said: “Cases of perverting the course of justice that involve allegedly false rape allegations are serious but rare. They are usually highly complex and sensitive often involving vulnerable parties, so any decision to charge is extremely carefully considered and not taken lightly. Such cases can only be brought where the prosecution can prove that the original rape allegation was false and the relatively few cases that are brought should not dissuade any potential victim from coming forward to report an assault.”

Prisoners Run Riot After Fire at Serco Managed HMP Northumberland

Seven inmates at HMP Northumberland in Acklington had to be evacuated to the exercise yard where trouble flared after the incident last week. However the inmates surrendered after extra officers were deployed. No prisoners or staff were injured. It is the latest in a series of incidents at the jail which has raised concerns among staff as well as Lib Dem Berwick MP Sir Alan Beith. In March there was an incident involving more than 50 inmates who took part in a stand off and refused to return to their cells as riot officers stood by at the category C jail where there has been a number of redundancies. A spokesman for French company Sodexo Justice Services, which took over the jail in December 2013, said: “We can confirm there was an incident involving seven prisoners at HMP Northumberland on Thursday night on 27 November. Prison staff resolved the situation within a few hours.” *Hannah Flint, Chronicle Live, 4/12/14*

Grayling Humiliated Again as High Court Overturns Prisoner Book Ban *Alan Travis*

The blanket ban on sending books to prisoners in England and Wales has been declared unlawful by the high court. Mr Justice Collins has quashed the ban imposed by the justice secretary, Chris Grayling, and ordered him to amend his policy on what can be sent to prisoners. In his ruling, the judge said that it was strange to treat books as a privilege when they could be essential to a prisoner's rehabilitation. "A book may not only be one which a prisoner may want to read but may be very useful or indeed necessary as part of a rehabilitation process," he said. The judge also criticised Grayling's open letter responding to a protest by the poet laureate, Carol Ann Duffy, with the "somewhat misleading" impression that prisoners could order unlimited books from Amazon via the prison shop.

The case was brought on behalf of HMP Send prisoner Barbara Gordon-Jones, a 56-year-old convicted of arson, who has a doctorate in English literature. The judge acknowledged that the books she wanted to read were not those normally required by prisoners. The court was told that when she saw a neurologist in March she was reading Alan Bennett, Monica Ali and the dialogues of Marcus Aurelius. The ban was imposed a year ago as part of a crackdown by Grayling on what ministers described as prisoners' "perks and privileges". It sparked a high-profile campaign, led by the Howard League for Penal Reform, that has attracted support from leading authors, including Duffy, David Hare, Salman Rushdie and Jeffrey Archer.

"This is a wise, just and irrefutably correct ruling," said Duffy. "We all look forward to hearing to which prison library Mr Grayling will be sending books for Christmas." Philip Pullman was also delighted: "Clearly the Ministry of Justice was taken aback by the public reaction to their mean and vindictive ban, and tried to claim that there was nothing new, it only enforced an already existing rule, and so forth. Bluster. I'm very glad that the courts have seen through it, and stated that reading is a right and not a privilege," he said. Denis MacShane, the former Labour MP who was jailed for expenses offences, said: "library.All envelopes and packets are opened and searched when they arrive in prison and the idea that drugs or extremist material arrives in the post is just nonsense." The Howard League argued that the policy on relatives sending in essentials to prisoners should be restored to the previous position leaving it to the governors' discretion as to how many or what type of parcels prisoners could receive.

The judge says he accepts that there was no intention by ministers to prevent prisoners getting access to books. The existence of prison libraries and the provision to order books with their weekly prison earnings, which can be as low as £2.50 a week, meant the restrictions stopped short of an outright ban on books in prisons. But he says the inclusion of books in the restrictions on what can be sent in by family and friends under a new incentives and earned privileges scheme was seen as a ban on books. Collins said in his judgment: "I see no good reason, in the light of the importance of books for prisoners, to restrict beyond what is required by volumetric control … and reasonable measures relating to frequency of parcels and security considerations."

A Prison Service spokesperson said: "This is a surprising judgment. There never was a specific ban on books, and the restrictions on parcels have been in existence across most of the prison estate for many years and for very good reason. Prisoners have access to the same public library service as the rest of us, and can buy books through the prison shop. We are considering how best to fulfil the ruling of the court. However, we are clear that we will not do anything that would create a new conduit for smuggling drugs and extremist materials into our prisons."

Frances Crook of the Howard League said: "We are very glad that common sense has now prevailed in time for Christmas, when for three weeks prisons will be virtually in lockdown. During that time, receiving a book from a loved one could literally save a life. We now call

ly, the evidence of the gunshot residue on the jacket. … [T]hat is the way in which you should approach that remark if you are sure that it was made. "

The judge then reviewed Cunningham's evidence in detail and noted various inconsistencies and the extent to which his account changed when cross examined. He went on: "Ladies and gentlemen, Aaron [sic] Cunningham's evidence is central to the prosecution case. He has admitted lying on many occasions. His evidence is materially different from, for example, the evidence of Garside or Turner. He may well, you may think, have purposes of his own to serve. You should approach his evidence with great care and considerable caution, and you should look for evidence which supports his evidence."

Passing on to Cunningham's visual identification, Penry-Davey J gave an entirely appropriate Turnbull direction and drew attention to the particular weaknesses in Cunningham's identification of the appellant. The appellant was not well known to him; he did not get out of the car; he only had a momentary glimpse; he could not be sure that it was the appellant; and he could not say anything about the length of his hair. He noted that there had not been an identification parade for the appellant who had consequently lost the prospect that, at such a parade Cunningham might have identified someone else, identified no-one at all or positively exonerated him. As to the evidence of voice identification, Penry-Davey J said: "Ladies and gentlemen, you must exercise even greater caution when considering the identification of Dwaine George by voice, and I should remind you of the weaknesses in that evidence. Stuart Shaw said that Dwaine George was not a friend of his, and that they had only been at the same school together for a short time in May/June '98; he had not spoken to Dwaine George since; had only seen him about twice; and had only heard him talking once. When first asked about it he had described what he heard as "a coloured person's voice," but did not suggest it was Dwaine George. He said that was because he told the officer he was not sure about it and the officer told him not to say if he was not sure. He said that he could not be sure if it was Dwaine George's voice. I have told you of the evidence that could support Cunningham's identification of Dwaine George. So far as support for Stuart Shaw's identification of Dwaine George is concerned, the only evidence that, depending on the view you took of it, could support Shaw's evidence is the evidence of the gunshot residue found on the coat, … from Dwaine George's home."

Thus, once again, the judge looked to the gunshot residue (described as such) as potentially corroborative of the voice identification. Dealing with the gunshot residue, Penry-Davey J gave a measured account of the evidence underlining that the particles containing aluminium could have been produced from any cartridge case of which the expert had samples or from other ammunition that contains aluminium. He did not differentiate between the different particles (with different chemical constitutions) but went on to remind the jury that Mr Collins had said that the residue might have arisen: " '…because of someone wearing a coat close to somebody else firing a gun, or a coat in physical contact with a gun, or fired ammunition, or a coat in contact with any object or surface containing gunshot residue'. He said 'It suggests some sort of association with a shooting'."

The jury was then reminded that, when cross examined, Mr Collins had said that it was not possible to establish any specific link with the shooting of Daniel Dale; other potential sources for such residue could be blank firing guns and industrial nail guns; the dummy cartridge could be a potential source. The judge continued: "Somebody handling the bullet and putting his hands in his pockets: the transfer could take place that way. He said 'It's not possible to say whether the four particles were from the same or different sources.' He said 'I agree that I cannot be sure that the shooting incident on 25 July was the source of the residue found on the coat, that the dummy cartridge could be'…. Well, ladies and gentlemen, that again is evi-

on the front of the coat; and one particle containing barium and aluminium in the pocket. He found particles containing lead, barium, antimony and aluminium on the spent cartridges at the scene. He concluded that the coat had an association with a shooting incident, but it was not possible to establish a link with the shooting of Dale. The prosecution asserted that this was evidence supportive of the appellant having been the gunman.

The defence asserted that the particles could have arisen from sources other than the shooting. They had the benefit of expert evidence from Dr Renshaw who took the view that it would be unsafe to link the gunshot residue on the coat to the shooting of Dale. Further, a dummy cartridge taken from the appellant's mother's car could have been the source of the gunshot residue on the coat. In cross-examination, these propositions were put to Mr Collins who did not disagree with them: in the circumstances, they were not considered contentious and Dr Renshaw was not called to give oral evidence.

At the close of the prosecution case, both defendants made a submission of no case to answer. Counsel for the appellant submitted that both limbs of the well known test in R v Galbraith 73 Cr App Rep 124 were satisfied. Alternatively, the evidence was tenuous and inherently weak; none of the evidence individually or collectively amounted to a case which should be left to the jury. Dismissing the submissions, Penry-Davey J held that the state of the evidence was such that a jury properly directed could convict on the matters charged, and allowed the case to proceed.

The Defence Case: The defence case was alibi: the appellant had gone to eat at Keating's home. This was evidenced not only by his own account but also by Keating's mother and her sister. Brown said that he went to McDonald's restaurant before visiting friends; that evidence was corroborated by Jerome Barlow. In his closing speech, counsel for the appellant highlighted the weaknesses in the identification evidence, and asserted that the gunshot residue on the coat could be the product of secondary transfer.

The Summing-up: Penry-Davey J provided the jury with directions of law which are not criticised. Although a circumstantial case which might have benefited from some description of the way in which such evidence should be approached along with its limitations, he addressed the four pillars of the prosecution case and did highlight the interdependency of the evidence. In relation to the background, the judge both pointed to and summarised the relevant admissions and other evidence. Turning to Cunningham's report of the telephone conversation, he said: "Ladies and gentlemen, normally what one person says in the absence of another person, as for example in interview by the police, is not evidence against that other person. You will appreciate the reasons for that: the other person is no there to dispute what is said. The situation here is different. If you accept Cunningham's evidence, that Nathan Loftus did say on the phone that Dwaine George was coming to collect the gun, that is evidence that you can consider in deciding whether or not Dwaine George was one of those who came to collect the gun. Of course, you would not conclude that he did so merely upon the say-so of Nathan Loftus, but it is evidence that you can take into account in Dwaine George's case if you are sure that the remark by Nathan Loftus, on the telephone to Aaron [sic] Cunningham, was made as part of a joint enterprise to collect and possess the gun, and you conclude that there is evidence, apart from Nathan Loftus' remark, of Dwaine George's participation in the joint plan. The remark cannot itself be used to prove the link between George and the joint plan, there must be other independent evidence which establishes that link before you consider the remark as evidence in the case against George."

Penry-Davey J then dealt with the 'other independent evidence' and tied the various pillars of the prosecution case together. He said: "There is evidence in the case that you can consider in that context: first, the evidence that Dwaine George was with Ryan Loftus on Dillicar Walk; secondly, the evidence of Shaw that he recognised the gunman's voice; and, third-

on the Ministry of Justice to relax the ban on sending in parcels completely so that prisoners can receive essentials such as underwear and small gifts from their children. This would help to alleviate distress in prisons at a time when they are in crisis."

John Healy, whose 1988 memoir The Grass Arena chronicled his journey from a life of street drinking and petty crime to a chess Grand Master, said the ban on books being sent to those serving sentences was a counter-productive measure, and welcomed the ruling overturning the policy. He said: "It is great news – but it should never have been suggested in the first place. It is obvious that books can play a key part in a prisoners rehabilition – they did for me. They were a catalyst. Books helped me come to terms with how I had lived my life. It is very hard to be both a reader and a villain. Reading helps you understand the world around you and relate to how your behaviour effects others. It should be encouraged as much as possible." He added the book ban made it clear the Conservative minister did not place prisoner reform at the heart of justice policy making. He said: "This shows Grayling considers prison to be primarily about punishment, pure and simple."

Covert Surveillance Under Regulation of Investigatory Powers Act (RIPA)

A police officer decides to install a surveillance camera to view the street where drug dealers operate and intends to circulate a letter to all local residents about the camera being installed and the reasons why. The dealers have a network of lookouts in local streets meaning there is no other way of the police getting into the street to conduct observations and the camera is the only answer. A policeofficer volunteers to go to the top floor of an overlooking block of flats and use binoculars to observe proceedings. In relation to both ideas, would this be 'directed surveillance' and therefore require a RIPA authority?

Answer: Neither of the operations mentioned in the question would warrant serious consideration for authorisation under the Regulation of Investigatory Powers Act 2000. Section 26(2) of the Act provides, among other things, that surveillance is directed for the purposes of the Act if it is covert, but not intrusive, and it is undertaken: - for the purposes of a specific investigation or a specific operation, and in such a manner as is likely to result in the obtaining of private information about a person (whether or not one specifically identified for the purpose of the investigation.). I see no necessity or wisdom in circulating a letter to the residents advising them of the installation of the camera and the rationale behind the decision. Clearly such action would bring serious risk of the operation being prejudiced.

If the residents were not to be apprised of the operation, then it would be a directed one within the terms of section 26(2) (a), above, but it would still be outside the scope of section by reason of it not being undertaken in such a manner "as is likely to result in the obtaining of private information about a person." By virtue of section 26(10) of the Act "private information" should be construed as any information relating to his private or family life. Clearly, in the sighting of the camera and the keeping of rooftop observations, care should be taken to avoid the risk of collateral intrusion of a person's home or private life. The crucial issue is that neither of the operations described in the question provide any hint of them trespassing on a person's private or family life,

The necessity to consider authorisations under RIPA for surveillance operations only arises where there is risk or likelihood of a person's rights under Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms being violated. Save for those circumstances where there is the risk of collateral intrusion, as a general rule there is no necessity to consider the obtaining of RIPA authorisations for operations involving the

use of overt or covert surveillance techniques which are conducted in a public place.

And finally, let us remind ourselves that the Regulation of Investigatory Powers Act 2000 places the police under no duty or obligation to obtain authorisations under the Act. The circumstances outlined provide no evidence of human rights violations, and it would be nonsense to suggest that drug dealing activities are aspects of a person's private life deserving protection from violation. *Source: Police Oracle*

Swearing Man 'Risks Life in Prison' After 176 Convictions

George Lancelot, 61, was jailed for 20 months on Thursday at Exeter Crown Court for breaching an anti-social behaviour order (ASBO) banning him from swearing and drinking in public. His latest offence was committed hours after he was released from prison. As Lancelot was led from the dock on Thursday he shouted: "I'd get less for burglary." He then swore at the court. Judge Phillip Wassall told Lancelot, of Higher Warberry Road, Torquay: "I am told there is unlikely to be any psychiatric disposition to help you. Unless you deal with this you could spend the rest of your life in prison." Kevin Hopper, defending, said the court should order mental health treatment. "He (Lancelot) cannot comply with the ASBO because he is mentally ill," said Mr Hopper. He faces a life term but I don't know what to suggest." Andrew Neilson, of the Howard League for Penal Reform, said: "We should not be filling our jails with people who have mental health needs, let alone someone who appears to pose no actual threat to the public."

Undercover Police Spy Accused of Encouraging Activist to Crime *Rob Evans, Guardian*

An undercover police officer has been accused of encouraging and helping an animal rights campaigner to commit illegal acts which led to his being jailed for four years, according to legal documents. The campaigner, Geoff Sheppard, has lodged an appeal to overturn his convictions for possessing a shotgun and components for an incendiary device, alleging, in effect, that he was a victim of an agent provocateur. Sheppard said the undercover officer, whose covert role is revealed by the Guardian this Thursday, actively encouraged him to buy the shotgun and offered him money to purchase it. He claims that as part of a "determined, cynical, and targeted effort" against him, the undercover spy asked him for instructions on making an incendiary device, and tested it.

The Guardian has established that the undercover officer at the centre of the new allegations worked for a controversial covert unit that infiltrated hundreds of political groups for 40 years. The officer, a member of the Metropolitan police's special demonstration squad, used the fake name of Matt Rayner to pose as an animal rights campaigner for five years. In the last three years 50 campaigners have had their criminal convictions quashed because key evidence gathered by undercover officers had been concealed from their trials.

The home secretary, Theresa May, has commissioned a lawyer, Mark Ellison QC, to examine other convictions of political campaigners to see if they should also be overturned. She has also ordered a wider ranging public inquiry into the conduct of undercover officers following a succession of revelations, ranging from spying on the family of Stephen Lawrence to forming sexual relationships with women placed under surveillance.

The allegations made by Sheppard are contained in a legal application lodged at the appeal court and focus on Rayner, the latest undercover officer to be publicly identified. Like the other undercover officers Rayner developed a fake identity, bolstered by false documents; he pretended to be an animal rights campaigner between 1991 and 1996. Among the campaigns he infiltrated was a London group campaigning to stop the high street chemists Boots from selling products that had been tested on animals.

utes after the second telephone call, a red car drew up outside his house. Cunningham said that the appellant was driving the car. In cross-examination, he accepted that he had a momentary glimpse of the driver and could not be sure that it was the appellant. It had been a black man who resembled him. In re-examination, he said that he had presumed that it was the appellant who was driving the car.

Brown came to the door and Cunningham handed the gun to him, wrapped in a plastic bag. Cunningham was certain about this identification. He had known Brown for a long time and saw him face-to-face. He later identified Brown at an identification parade. Brown got back into the front passenger seat of the car. As the car was driven away, Cunningham noticed two other black males sitting in the back of the car, but was unable to identify them.

Turning to the voice recognition, Stuart Shaw was among those called by the prosecution as eye-witnesses to the shooting incident. He said that on 25th July he went towards New Allen Street. A burgundy Honda Civic car came down Osbourne Street. The car turned towards its side and two people in black got out from the passenger side at the front and the rear. Their faces were covered and they wore black gloves. They ran towards the group and raised their hands. Everybody ran. He heard one shot as he got to Keel Close. On Farnborough Road, he noticed the Honda Civic coming around the corner. He froze. It sped towards them and he shouted "Run." He ran through the alley-way. He heard somebody shout loudly "You're dead now." He said that it was the appellant's voice. He saw an arm raised and heard a gunshot, followed by Thomas shouting "Oh my hand". He carried on running towards Nuneaton Drive and his aunt's garden where he hid in the porch. He saw an arm and a gun, and then heard another gunshot. The gunman was roughly the height of the fence. He saw the shot hit Dale, who put his hand to his back.

In cross-examination, Shaw agreed that he and the appellant had both been at the same school together in May-June 1998. The appellant was not his friend. He had not mixed with the appellant since they left school and had never spoken to him. He had seen him about twice in four years but had not spoken to him on those occasions. He had once heard him talking outside a shop. He could not remember when that was and did not know what they were talking about. He told the police soon after the incident of what he then described as a coloured person's voice, because he told the officer he was not sure about it. He could not be sure that it was the appellant's voice. He agreed that in his statement he made no reference to the two men who got out of the car wearing gloves, but had referred to the gunman, whose arm he saw later, wearing gloves. He said that was more likely to be right. The gunman was probably over six foot in height. In re-examination, he said that he thought the voice was the appellant's but was not sure about that.

Against that background the evidence of gunshot residue falls to be considered. When the appellant was arrested at his home on 21st August, the police found a coat stored under the stairs. It was a black Henri Lloyd hooded jacket, size XL. The appellant asserted that it did not belong to him. Subsequent analysis found that it bore gunshot residue. David Collins of the Forensic Science Service ("FSS") gave evidence for the prosecution. A transcript of his testimony is not available; we rely on his report and the summary of his evidence provided in the summing up by Penry-Davey J.

Mr Collins said that on the discharge of a firearm, a great deal of gunshot residue could come from the muzzle or the breech, depending on the construction of the weapon. The residue was a fine dust that could settle on persons or objects close to the firing gun. If it settled on clothing which was worn, it could disappear in a day or two, but if the clothing were left undisturbed the residue may be detectable for a long period. In his reports and witness statements, Mr Collins referred to finding two particles containing lead, barium, and antimony; one particle containing barium and aluminium

responsible for the shooting, using a Walther PPK self-loading pistol which was recovered from the house of Cunningham. Cunningham said that he was minding the gun for Loftus, who had telephoned to say that the appellant would collect the gun. He described how a car arrived with the appellant driving. Brown got out of the car and collected the gun from him at the door of his house. The offence of possession of the firearm with intent to endanger life to which Loftus pleaded guilty was admitted pursuant to s. 74 of the Police and Criminal Evidence Act 1984. The defence of the appellant was one of alibi.

The Prosecution Case: The evidence against the appellant at trial (which was entirely circumstantial) can be described as being based on four limbs or pillars, namely the factual background to the relationships between the various participants leading up to the shooting; the evidence of Cunningham; the evidence of voice identification; and the presence of gunshot residue on a coat found at the appellant's home. The appeal relates strictly to the last two limbs but it is necessary to provide the context. The background to the shooting was placed before the jury principally by way of a number of formal admissions by all three defendants; in addition, there was both CCTV and witness evidence all leading to the inference that the shooting was the outcome of gang rivalry.

In January 2001, Paul Ward was murdered. Between 23rd and 25th July 2001, a youth named Sheldon Keatings was tried at Manchester Crown Court in connection with that murder. Keatings was subsequently acquitted. It was admitted that the appellant was present at court on the 24th and 25th July and that on 24th July, Keatings was punched in the face by Leon Critchley, a friend of Ward. At about 4.30 pm on 25th July, the appellant, Keatings and others left the court and travelled in two cars, a red Mazda and a silver Honda Prelude, to the Powerhouse Gym in Collyhurst. It was also admitted that the appellant, Keatings and others left the gym in the same cars and followed Critchley, who was riding a moped, to the New Allen Street area. The occupants of the cars were there threatened by a group of youths armed with various weapons. Critchley broke the driver's window of the Mazda with his crash helmet. Thereafter, both cars then left the New Allen Street area and were driven to Ruskington Drive, Harpurhey. The prosecution case was that the appellant and Brown then acted together with others as part of a joint enterprise in the shootings of Dale and Thomas.

Turning to the evidence that Cunningham gave, two aspects of what he said were capable of linking the appellant to the shooting: these were his report of two telephone calls and his visual identification of the appellant. As to the first, it was admitted that at 7.26 pm and 7.27 pm on 25th July, two telephone calls were made to Cunningham's mobile telephone. In evidence, Cunningham said that both calls were from Loftus. In the first call, Loftus said that he was coming to get the "thing," by which he meant the gun that Cunningham was keeping for him. In the second call, Loftus said that he was not coming, but the appellant was: the conversation (including the identification by name of the appellant) was held to be admissible.

In that context, the admission of the fact that Loftus had pleaded guilty was said to be relevant to this element of Cunningham's evidence. The prosecution submitted that this was a necessary link in the evidential chain, which may be treated by the jury as confirming Cunningham's evidence as to the involvement of Loftus. The appellant's counsel submitted that it was irrelevant, or alternatively of only marginal relevance and should be excluded under s.78 of the Police and Criminal Evidence Act 1984. Penry-Davey J allowed the prosecution to adduce the guilty plea. He ruled that it was relevant to Cunningham's account, which was very much in issue, and that no unfairness was caused by its admission.

Turning to Cunningham's visual identification of the appellant, he said that 15 or 20 min-

Bijan Ebrahimi Death: 16 Police Staff Face Charges *Paul Peachy, Indpendent*

Sixteen people from a single police force face criminal and disciplinary charges after the cries for help from a disabled man wrongly accused of paedophilia and killed by a drunken vigilante were allegedly ignored in the days before his murder. Three police officers and a community support officer from Avon and Somerset police face a criminal trial next year for misconduct in public office over Bijan Ebrahimi's killing in July 2013. Twelve others face disciplinary hearings in what is thought to be the largest number of police officers and staff facing sanction from a single incident investigated by the Independent Police Complaints Commission (IPCC).

Iranian-born Mr Ebrahimi had repeatedly complained of bullying at his Bristol home but was arrested after he was wrongly accused of being a paedophile after he started filming neighbours' anti-social behaviour to bolster his case for a move. Following Mr Ebrahimi's release after questioning, neighbour Lee James repeatedly stamped on his head and dragged the body 100 yards to set it alight. He was sentenced to life in prison and a neighbour, Stephen Norley, was jailed for four years after he helped to drag the body away.

Three police constables – Kevin Duffy, Helen Harris and Leanne Winter – were charged with misconduct in public office for "allegedly failing to respond to allegations and calls for help from Ebrahimi", the Crown Prosecution Service said yesterday. A police community support officer, Andrew Passmore, faced the same charge after falsely telling a 999 operator that he was outside Mr Ebrahimi's home at an important time, the CPS said. He is also accused of perverting the course of justice. The officers are due in court next month. Mr Ebrahimi's family said: "We are relieved by this decision and trust the officers will now face the full rigour of the law."

Too Many Young Adults go From 'In Care' Directly to Prison *Paul Gallagher, Independent*

Young adults leaving care are being let down by the justice system, according to a new academic study. Despite up to a third of the current prison population having experienced the care system, criminal justice professionals are ignorant of ways to help young care leavers stay out of jail, it warns. Professionals "lacked the knowledge and training necessary to deal with issues specific to care leavers", according to research to be published by Manchester Metropolitan and Lancashire Universities. Examples of this lack of knowledge include being unaware of individual grants worth more than £1,000 to help stabilise young people fresh out of local authority care. The report warns that such knowledge is "crucial" to keeping those who are leaving care out of prison.

Academics studying Clear Approach, a pilot scheme designed by the Care Leavers Association (CLA) to help men and women aged between 18 and 25 stay out of prison, found that too many criminal justice professionals lacked the skills to help young men and women who had been in care. The Clear Approach scheme forms part of an Intensive Alternative to Custody (IAC) order: a unique 10-week programme offered to young men otherwise facing short custodial sentences. One participant, Jake, 23, was taken into care aged 10, but on leaving found himself homeless, the victim of attempted rape, and under pressure to sell drugs to survive. He considered prison a safe haven. "It might sound stupid, but people feel safe in prison. You've got three meals a day, you've got telly, you've got people what are going to watch you and make sure you're alright," he said. Others said that, until joining Clear Approach, they had been completely unaware of any leaving care support they might be entitled to.

Max, 19, received a leaving care adviser as well as the leaving care grant he was entitled to, which came to more than £1,600 and provided him with some much needed financial stability. All of the young men reported positive effects after being involved with the CLA pilot

scheme. The soon to be published research notes: "Clear Approach allows for empowerment to occur at an individual and collective level, through group work and listening to the stories of outside speakers who have been through the care and criminal justice systems themselves. In our view, Clear Approach should be viewed as an integral part of a much wider strategy to address the often-neglected needs of care leavers in the criminal justice system. Nationally, there is very little specific support available to care leavers in the criminal justice system, and an intervention like Clear Approach has great potential to help fill this gap."

The report author, Patrick Williams, added: "The important issue of making visible those who are at particular risk of becoming lost in the criminal justice system was also highlighted, as was the theme of empowerment which underpinned the structure of Clear Approach."

Regina V George Malcolm - Conviction Quashed, Immediate Release

In September 2014 the appellant stood trial in the Crown Court at Wood Green before His Honour Judge Ader and a jury on an indictment containing four counts of alleged sexual offences against his stepson, who is entitled to anonymity and whom we will call "M". Neither the complainant nor his brother were aware, until the appellant's arrest, that he was not their biological father. The appellant was of previous good character and has been married for 43 years.

In about 1976, at the age of 12, M developed a problem with his foreskin which was tight and sore. The prosecution case was that during this period the appellant assumed responsibility for helping M with his problem and then began sexually abusing him, progressing from oral sex to digital and then penile penetration.

The four counts on the indictment and their particulars were count 1, indecent assault on a male aged under 16, consisting of the defendant performing oral sex on M on multiple occasions between September 1976 and September 1980. Count 2, indecent assault on a male aged under 16, consisting of digital penetration on multiple occasions during the same period. Count 3, gross indecency with a child aged under 14, consisting of the child performing oral sex on the defendant on multiple occasions between September 1976 and September 1978. Count 4, buggery committed by the appellant on the complainant on multiple occasions between 1976 and 1980 when M was under 16.

The defence case was that the complaints were fabricated. There had been a family argument in 2000, after which none of the family had spoken to the complainant again. The complainant was of course the principal witness for the prosecution. Statements were also read by the prosecution from a work colleague to whom M had complained in 2009 of his treatment by the appellant and also by M's wife whom had told about his being sexually abused by his father, again in 2009. The appellant gave evidence in his defence as did his wife and M's brother.

The trial began on Monday 1st September 2014. On Thursday 4th September the judge summed up and the jury retired at 2.29 pm. They were sent home at 4.22 pm. On Friday morning they retired to continue with their deliberations at 10.08 am.

Shortly before 2.00 pm on the Friday, by which time the jury had deliberated for some 5 hours excluding time for lunch, the judge suggested to counsel that "Perhaps we should give them the majority direction". Miss Tracy Ayling QC for the defendant and Mr Justin Bearman for the prosecution both said they had no objection and the usual majority direction was accordingly given at 2.00 pm.

At 3.37 pm the court resumed in the absence of the jury. The jury had sent the judge a note. Since it indicated their division of opinion at that stage, with figures, the judge did not show it to counsel although he indicated to them the nature of the note. Following the conclusion of the trial counsel on both sides have been informed of the full contents of the note and in

arguing that they are a target for criminal gangs, putting their personal and family safety at risk. Guardian News and Media - along with Associated Media, the Press Association and ITV - has opposed the application. Granting the officers anonymity would be a “major derogation of the open justice principles”, said barrister Caoilfhionn Gallagher, for the media. The police watchdog, IPCC, also opposed the application, along with the Begley family.

Victory for Innocence Project & Pro Bono Unit Cardiff Law School

Dwaine Simeon George - Conviction for Murder Quashed.

Initially knocked back by the CCRC, Dwaine put his case to The Innocence Project & Pro Bono Unit at Cardiff Law School, who pursued the case with diligence and sent it back to the CCRC, who paid heed to their findings and took the case back to the court of appeal

On 29th April 2002, in the Crown Court at Preston, before Penry-Davey J and a jury, this appellant (then aged 18, having been born on 23rd August 1983) was convicted of murder, attempted murder and possession of a firearm. For murder, he was sentenced to be detained pending the determination of Her Majesty's pleasure with the specified minimum term of 12 years, less time spent on remand. Concurrent terms of 10 years and 7 years detention were imposed for the other offences. On 25th May 2004, a renewed application for leave to appeal against conviction was refused by the full court (Clarke LJ, Jack J and Judge Fabian Evans): see [2004] EWCA Crim 1471. The appellant has since been released on licence.

In February 2005, an application was made to the Criminal Cases Review Commission ("CCRC") who, by decision dated 29th January 2007, determined that there was no basis on which the conviction could be referred to the Court of Appeal. At some stage, the Innocence Project and Pro Bono Unit attached to Cardiff Law School became involved in pursuing the matter on the appellant's behalf and, in the light of new scientific evidence as to the significance of particles said to be gunshot residue which is reflected in R v George (Barry) [2007] EWCA Crim 2722, and a recent decision in relation to voice recognition evidence, R v Flynn and St John [2008] EWCA Crim 970, a further application to the CCRC was submitted.

Having obtained its own scientific evidence, on 8th November 2013, the CCRC referred these convictions to this court pursuant to the provisions of s. 9 of the Criminal Appeal Act 1995 on the grounds that there is a real possibility of the court overturning the convictions, on the basis that the evidence of gunshot residue does not now attract the value attributed to it at trial, and therefore does not support the identification evidence. The appellant seeks leave to pursue further grounds of appeal relating to the admissibility of the voice identification evidence and the directions surrounding that evidence which followed.

T*he Facts:* On the evening of 25th July 2001 at Miles Platting, Manchester, Daniel Dale was fatally injured and Darren Thomas was wounded in the hand by shots fired from the same gun. The appellant was originally arraigned with three others: Ryan Brown, his brother Nathan Loftus, and Arron Cunningham. Before the trial, Cunningham pleaded guilty to possession of a firearm with intent to endanger life, possessing ammunition without a certificate, and assisting offenders. He went on to give evidence for the prosecution. Loftus changed his plea of not guilty to guilty of possessing a firearm with intent to endanger life. He was sentenced to 5 years in a young offender institution.

Brown, whose defence was alibi, was acquitted of murder and attempted murder but convicted of wounding with intent (later quashed as inconsistent with the acquittals) and possession of a firearm with intent (for which he was sentenced to 8 years' detention, reduced to 7 years on appeal). In short, the prosecution alleged that the appellant and Ryan Brown were

over the short adjournment. As you rightly anticipate, we take the view that it would not be appropriate. The defendant may be discharged from custody as soon as the necessary administration is carried out downstairs. http://www.bailii.org/ew/cases/EWCA/Crim/2014/2508.html

*Watson Direction'? - If it is clear that the jury are struggling to reach a verdict, then a Judge can (but is not obliged) give a 'Watson Direction' (sometimes called a 'give and take' direction). This is in the following terms: "Each of you has taken an oath to return a true verdict according to the evidence. No one must be false to that oath, but you have a duty not only as individuals but collectively. That is the strength of the jury system. Each of you takes into the jury box with you your individual experience and wisdom. Your task is to pool that experience and wisdom. You do that by giving your views and listening to the views of the others. There must necessarily be discussion, argument and give and take within the scope of your oath. That is the way in which agreement is reached. If, unhappily, [ten of] you cannot reach agreement you must say so".

It is very important that Judges do not put pressure on juries to reach a verdict due to the risk that those jurors in the majority will feel bullied into changing their verdict.

Improvements Needed in Police Custody Suites in South Yorkshire

Her Majesty's Inspectorate of Constabularies visited South Yorkshire to assess its custody suites and procedures and recorded improvements had been made since the last inspection but that more needs to be on improving risk assessments. This report provides a number of recommendations to assist the force and the Police and Crime Commissioner to improve provision further. "We expect our findings to be considered in the wider context of priorities and resourcing, and for an action plan to be provided." Inspectors were concerned to find that: - some restraint techniques were disproportionate, potentially unsafe and poorly supervised; and risk assessment and management in general was weak, with often formulaic handovers and pre-release risk assessments. - the process for the collection and analysis of custody data and management information required improvement, as did quality assurance arrangements and processes to ensure learning was applied; - most forces have a computerised custody system, but South Yorkshire had a mixed record-keeping system including handwritten records, many of which were in part illegible, which undermined accountable and effective risk management and handover;

Manchester Police Involved in Taser Death Seek Anonymity at Inquest

Five police officers involved in the fatal Tasering of a young man in Manchester have asked to remain anonymous at his inquest, claiming their lives would be in danger were they identified. One of them, a uniformed beat officer, fired a stun gun at Jordan Lee Begley after being called to his house in Gorton, east Manchester, on 10 July 2013. Jordan's mother, Dorothy Begley, had rung the police, concerned that her son had been accused of theft and was threatening to confront his accusers with a knife. They told a coroner that a £50,000 bounty has been offered to anyone who kills a Greater Manchester Police firearms officer, as vengeance for an earlier police shooting. The other four officers – two uniformed armed response officers and two from the counter-terrorism and specialist firearms unit – were involved in restraining Jordan, 23. He died in hospital an hour-and-a-half after being shot with the Taser, an electroshock weapon that fires high voltage electricity which should temporarily disable, but not kill, its victim. Next summer a jury will hear an inquest into Jordan's death. According to the general principle of open justice, inquests should normally be held in public and be fully reported unless national security is at risk. But all five officers from Greater Manchester police (GMP) have asked the coroner to grant them anonymity at the inquest,

those circumstances we set it out in full: "Having carefully considered the evidence in front of all of us we are unable to find an agreement at this stage. We are in a 8 to 4 and would be grateful if you could guide us to the next step."

The discussion which then took place in the absence of the jury included the following. Miss Ayling suggested that it might be appropriate to release the jury for the day and allow them to return on Monday. The judge said: "I am going to have to say something to them to try help them... I am not going to ask them what they want me to say because they obviously don't know... But I am looking exceptionally at the *Watson direction. I know that is a rare thing. It is the direction about obviously having your own views but collective agreement and give or take." The discussion proceeded: Miss Ayling: As I understand the Watson direction, it has variously been approved and disapproved and I believe more recently disapproved.Judge Ader: Well, do you want some time to think about that before I give the jury - Miss Ayling: I would like time to think about that because I have something in the back of my mind that it has recently been disapproved but I think there was something to suggest it had been reapproved." The judge said that maybe he should send the jury away. Mr Bearman, when asked for his view, agreed that the jury should be sent home and said: "I think, although they have been at it sometime today, because of the nature of the case, we might be able to help them by giving them a little more time. Certainly, I think Monday would be the limit of a 'little bit more time' but I think a bit more time is what they need." The judge called the jury back into court and, after giving them a firm direction about not talking to each other or to anyone else about the case over the weekend, sent them away until 10.00 am on Monday.

When the court reconvened on Monday morning Miss Ayling drew the judge's attention to the decision of this court in R v Arthur [2013] EWCA Crim 1852, to which we shall return later. A calculation was made of the time for which the jury had deliberated since the majority direction, namely one and a half hours. The judge said: "Maybe I should just send them out. The only thing is that the note that they sent just before they were sent home said, 'Can you give us further guidance?' or, 'Guide us to the next step,' I think it was... So to that extent the jury are asking for help. And I don't know whether that counts as exceptional circumstances, may be coupling it with the length of time they have been in retirement, which his now quite a long time..." After some discussion about the fact that the judge had (quite rightly) not given the figures in the note to counsel, the judge said: "I think in the light of what you tell me from the authority of Arthur, if you were against the giving of such a Watson direction I would hesitate to do so and certainly not do it now but I think it's slightly unkind to the jury who were looking for help if I simply say, 'Go on and consider your verdict'. They are looking for me to say something."

a mistaken reference by the judge to the case of Walhein, which he immediately corrected, he said that the possibilities were a Watson direction or simply asking the jury to continue with their deliberations albeit on Friday he had told them: "I have got something to say but I will say it on Monday". Miss Ayling replied: "If you are asking for a definite submission from me, it would be 'Please don't give them the Watson direction'".

Mr Bearman asked whether this ment that the Watson direction should not be given at all or not 'at this stage'. Miss Ayling replied: "At all". Mr Bearman continued: "It is a matter for your Honour's discretion. It is approved. It is still available to your Honour if you consider it is appropriate". Judge Ader said: "I haven't read the whole authority because I haven't had enough time but it doesn't surprise me that Pitchford LJ undertakes a careful analysis of all the authorities, that is entirely in keeping with what one has to expect of him, but it does kind of lead the bus hanging on the precipice as in the famous film as to whether you should give it or not. Exceptional circumstances -- every

case is exceptional. There is no definition of what means."

Mr Bearman replied the jury had asked for help and that help was available to the judge to give them in the form of the Watson direction as set out in the Bench Book, although he pointed out that any departure from the words "used by Lord Lane CJ in Watson is very dangerous". The discussion continued with Judge Ader saying: "I think the request for help is unusual. Whether it is exceptional, I suppose I can say for my own experience it is. They normally say, 'We can't agree'. They haven't said that, they have said, 'We aren't in agreement. Can you help us and take us to next it step?' ... I think I am inclined to try and avoid the consequences that we know of, just accepting a disagreement which nobody wants and to achieve that the only step that I can take to guide them at all is to give them the Watson direction. I think this case -- it's an exceptional case in terms of its evidence but then many cases are. Every case is unique and this is a very unusual case, even of its type and it seems to me that if the jury are asking for help and I do have something I can say then I am inclined to do it, in the exercise of my discretion."

He then called the jury back into court and gave the Watson direction in full adding: "That is as much as I am able to say to you by way of answer to your question and request for assistance." Just before 12.55 there was a discussion between the judge and counsel, in the absence of the jury, about whether it was time to call in the jury, ask them whether they had reached agreement and if not to discharge them. But, as it turns out, the jury returned to court at 12.55 and said that they were agreed on their verdicts. They returned the verdict of guilty on count 1 by a majority of 11 to 1 and verdicts of not guilty on counts 2, 3 and 4. We do not of course know whether the latter verdicts were unanimous or by majorities of 11 to 1 or 10 to 2. The appellant was subsequently sentenced to 4 years' imprisonment on count 1. He appeals against conviction by leave of the single judge.

The grounds of appeal argue that: (i) The learned judge erred in law in that the jury having sent a note they could not agree on the verdicts, the learned judge gave a Watson direction. Two-and-a-half hours later the jury delivered a guilty verdict on count 1 by a majority of 11 to 1, the verdict on the three other counts was not guilty. (ii)Given the evidence in the case such a finding by the jury was perverse and thus the conviction was unsafe.

We will take these in reverse order. The second is an argument that irrespective of the Watson direction the verdicts were inconsistent. Miss Ayling submits: "It was obvious to everyone in the court that this was a case of who the jury believed. There was no compromise about the way the findings of fact could be made. The allegations by [M] were of a continuing course of conduct. The defendant denied them. The allegations of all forms of sexual activity crossed over the years of [M's] ages 12 to 16."

Mr Bearman suggested to us that the reason why the jury were satisfied on count 1 might have been an admission by the defendant that he had on a few occasions washed the complainant's genitals in the bath; some of the acts of oral sex alleged by M and charged under count 1 were said to have taken place when he was in the bath. But the defendant was not charged with indecent touching and it seems to us an illogical basis for being sure of guilt on count 1 but not on any other count.

The test for inconsistent verdicts on more than one count against the same defendant is whether no reasonable jury applying their minds properly to the evidence could have arrived at the decisions which they reached. We have come to the conclusion that on the facts of this case that test is satisfied. We do not see how a jury who were not satisfied to the requisite standard of proof on counts 2, 3 or 4 could nevertheless be sure of guilt on count 1. Moreover, the divergence between the verdicts reinforces Miss Ayling's case on ground 1, the Watson

direction, to which we now turn.

Arthur is now the leading case on the Watson direction. Pitchford LJ, giving the judgment of this court, made it clear at [43] that: "….Once the jury is in retirement it is of the first importance that no individual juror should feel under any compulsion or pressure to conform with the views of the majority if to do so would compromise their conscience and, therefore, their oath. Furthermore, the jury as a whole, despite the heavy cost and inconvenience of a re-trial, should not feel under any pressure to return a verdict if, conscientiously, they are not unanimous or cannot reach the required majority.... Exceptional circumstances may arise that will require the trial judge to deal with the exigencies of the moment but, in general, there is no occasion to make exhortations to the jury to arrive at a verdict. This is why the Watson direction is rarely given by trial judges and, when it is, only as a last resort following a prolonged retirement after the majority verdict direction has been given."

At [44] he continued: "...if complaint is made about the trial judge's words of explanation, encouragement or exhortation the question for this court is whether the words used were appropriate in the circumstances or carried with them the risk that jurors would feel undue pressure to reach a verdict. If the effect of the judge's direction to the jury is to create a significant risk that the jury or individual jurors may have felt under pressure to compromise their oaths, the verdict is likely to be unsafe." As we read the decision in Arthur, there are cumulative tests which must be satisfied before a Watson direction can be given: (i) it requires exceptional circumstances, which is why it is rarely given; and even then (ii) it can only be given as a last resort where there has been a prolonged retirement following the giving of a majority direction.

Pitchford LJ did not define "exceptional circumstances" in Arthur and we shall not attempt to do so now. Suffice it to say that we do not consider that either the jury note or any other feature of this case made it exceptional: we do not understand the passage in the transcript where the judge appeared to indicate that it was. Nor could it be said that there had been a prolonged retirement following the majority direction. The note did not indicate irretrievable deadlock. This was nowhere near a situation of last resort. When the Watson direction was given the jury had been in retirement for less than two hours since the majority direction and less than six hours in all. The charges were serious. The judge's first instincts that he should not give the Watson direction (at any rate at that stage) were correct. We accept that this is not a case where the Watson direction was given at the same time as the majority direction; nor one where, for example, it was given on a Friday afternoon with the jury returning a verdict just before the end of the court day; nor one where a member of the jury was on the verge of having to be discharged for personal reasons. So this was not a case of verdicts reached under pressure of time. But it may have been a case where the verdicts were reached under pressure to compromise.

The result reached by the jury in this case has the clear hallmarks of a compromise. We observe that the jury note sent at 3.37 pm on the Friday did not say that "we are in an 8 to 4 [situation]" on one count nor for that matter on three counts. There is a real possibility, if not a probability, that the disagreement indicated at that stage was on the case as a whole. We shall never know. If it was, then the Watson direction created a significant risk of pressure to compromise.

Putting Miss Ayling's two grounds together, the fact that in a case involving a complete confrontation on credibility the jury reached verdicts of guilty on one count and not guilty on the others after being given the Watson direction means that the verdict on count 1 must be regarded as unsafe. The appeal will be allowed and the conviction quashed.

Mr Bearman: My Lord, may I just say for the record, I am instructed to seek a retrial; but in the light of your judgment that would seem not to be an application that this court would entertain.

Lord Justice Bean: Mr Bearman, we have discussed a possible application of this kind