Neutral Citation Number: [2016] EWCA Crim 52

Case No: 2014/00911/B5
2015/01146/B5

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM Cardiff Crown Court
Mr Justice Rose

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 08/03/2016

Before :

LADY JUSTICE HALLETT DBE
VICE PRESIDENT TO THE COURT OF APPEAL (CRIME)
MR JUSTICE NICOL
and
MR JUSTICE COULSON
Between:

ALAN CHARLTON AND IDRIS ALI	**Appellant**
- and -	
REGINA	**Respondent**

- -
- -

Ms Louise Blackwell QC and Mr Craig MacGregor for the **Appellant Charlton**
Mr William Hughes QC and Mr Heath Edwards for the **Appellant Ali**
Mr Richard Whittam QC and Ms Louise Oakley (instructed by the **Crown Prosecution Service)** for the **Respondent.**

Hearing dates: 8th, 9th and 10th February 2016

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Approved Judgment

Lady Justice Hallett, Vice-President of the Court of Appeal Criminal Division:

This is a judgment to which each member of the court has contributed.

Background

1. On 26 February 1991 in the Cardiff Crown Court, the appellants were convicted of the murder of Karen Price. On the same date the trial judge, Rose J., (as he then was) sentenced Charlton to imprisonment for life with a minimum tariff of 15 years and ordered Ali to be detained at Her Majesty's Pleasure. They both appealed. On 11 November 1994 this court dismissed Charlton's appeal but allowed Ali's appeal and quashed his conviction. A retrial was ordered.

2. On the 21 December 1994 Ali pleaded guilty to the manslaughter of Karen Price. He was sentenced to 6 years imprisonment and having served the equivalent term was released. He did not attempt to appeal against his conviction.

3. In August 2009 Charlton made an application to the Criminal Cases Review Commission ("CCRC"). It decided to investigate and concluded there were grounds to refer his conviction to this court. They then invited and received an application from Ali. They concluded that exceptional circumstances existed justifying referral of his plea of guilty, despite the absence of any previous attempt by Ali to appeal his manslaughter conviction. Accordingly, both appeal again against conviction upon references by the CCRC under s.9 Criminal Appeal Act 1995 on the basis that there is a real possibility that the Court of Appeal will consider that the appellants' convictions are unsafe.

Investigation into the death of Karen Price

4. On 7 December 1989, workmen digging in the back garden of 29 Fitzhamon Embankment, Cardiff, uncovered the skeleton of a young female, wrapped in carpet tied with electric flex. There was a plastic bag over her head and items of clothing remained. Her hands appeared to have been tied behind her back with flex.

5. Numbers 27 and 29 were in the middle of a row of terraced properties and subdivided into flats or bedsits. An alleyway ran alongside the back gardens separated from the gardens by walls or fences. Access to the garden of number 29 was through the house or through a gate from the alleyway. Between June 1981 and February 1982 Charlton was the tenant of the basement flat with direct access to the garden. The body was found within feet of his back door.

6. The first task of the investigators was to identify the body. This proved difficult but a facial reconstruction artist produced an excellent likeness of Karen from her skull. This was published widely and members of the public contacted the police to identify the likeness as that of Karen Price ("KP"). Further examination confirmed KP's identity to the satisfaction of the experts consulted and the police. Police officers set about discovering everything they could about her lifestyle, her friends and associates and her movements. They discovered the last time she was seen alive by anyone in authority was July 1981 when she had absconded from a local authority assessment

centre (Maes-yr-Eglwys) in Pontypridd. At that time she was nearly 16, Ali was 16 and Charlton 21 years of age.

7. Unsurprisingly the police investigation thereafter focussed on tracing those who might have known her at Maes-yr-Eglwys and those who had access to the garden at the relevant time, namely the occupants and past occupants of the flats or bedsits in numbers 27 and 29. Tracing the occupants of this multi occupancy building was not an easy task. A statement was taken from Alan Charlton in December because of his connection with the basement flat. Tracing the former residents of Maes-yr-Eglwys was not as difficult but produced little by way of leads, other than the possibility that KP may have absconded with others and resorted to selling sexual services to survive.

8. During the evening of 15 February the BBC "Crimewatch" television programme included a piece on the KP murder investigation. Detective Chief Superintendent Williams appealed for further help from any members of the public who might have seen KP or associated with her. Footage was shown of an actress looking like and dressed as her in some of KP's known haunts. The second appellant saw Crimewatch and contacted the police that night.

Prosecution case

9. At the heart of the case against Charlton was the evidence of a woman we shall call D. Against Ali, the prosecution relied on his various confessions and admissions.

Evidence from D that she had been present and witnessed the murder.

10. D was 13 in 1981. She told the jury that she often ran away from the Maes-yr-Eglwys centre but never with KP. Her friends used to hang about outside Astey's café in Cardiff and she met KP there on several occasions. They sniffed glue. When on the run (and as a vulnerable child) D provided sexual services for money and sometimes gave Ali half her proceeds. She knew Charlton as Alan: he was a doorman at the Xcel and she had seen him outside Astey's. She had sex with him in the ground floor flat at 29 Fitzhamon Embankment and gave half the money he paid her to Ali. She met Charlton a week later outside Astey's. They went back to the same room and when she refused to behave in the way he wished, he cut her leg with a pen-knife. Also, he wanted to replace Ali as her 'pimp'.

11. A few days later she and KP went with Charlton and Ali to the same room at 29 Fitzhamon Embankment. There was more glue sniffing. Charlton asked her and KP to get on the bed naked to pose for photos. D refused and Charlton slapped her face. KP intervened; he turned on her and punched and slapped her till she fell. Ali tried to pull Charlton off but he kept on hitting KP. D was too scared to watch. When Charlton stopped there was blood from KP's mouth and she did not respond. Charlton said she was dead. He put her on the bed, went out and returned with what looked like white curtain wire. He turned KP over, tied her hands and put a carrier bag over her head. He removed her pants and had sex with her. He told Ali to do the same. Ali did but looked as if he wanted to be sick.

12. Charlton then brought in what looked like a rug. Both Ali and Charlton lifted KP from the bed on to the rug and carried her outside. D was in the corner crying when both men returned after about ten minutes with dirty hands. Charlton warned D to say

nothing or she would die the same way. Ali advised her to say nothing and seemed as scared as she was. She did not tell anyone because she was afraid. She did not see either Charlton or Ali again.

13. She was questioned at length at trial about what she told police in January and February 1990. She denied making up a story to accord with Ali's version. The prosecution pointed to the fact there were a number of things he said with which she disagreed. These included her assertions that: she did not attend a blue film party at 29 Fitzhamon Embankment, she did not tell Ali that KP was a prisoner, she did not help bury the body four days later and she had not seen Charlton strangle KP. After three days of robust questioning by counsel for the defence, she continued to insist that her third statement to police made on 23 February 1990 was a true account, save for the fact that she had failed to mention in it Charlton and Ali's sexual activity with KP after she had been killed or assaulted. We consider later the detail of what she told the police and the circumstances in which her third statement was made.

Admissions

Charlton

14. Following his arrest on suspicion of murder on 23 February 1990 Charlton was interviewed eleven times. He consistently denied any part in KP's death.

15. However, Ashong, a friend of Ali's brother, contacted the police to offer information about an alleged admission Charlton made in prison. He claimed Charlton said KP was raped and he (Charlton) strangled her in Ali's presence.

Ali
Interviews

16. He was seen by police on 16 February 1990 and interviewed as a witness over five or six hours. Over the next seven days he gave various accounts. In a witness statement made overnight on 19/20 February he gave an account of glue-sniffing, drug-taking and casual sex during the summer of 1981. He mentioned D but not KP's death. On the afternoon of 22 February he saw his brother then returned to the police station where he spent the night. His solicitor was with him during an evening session of questioning but the officers continued into the early hours after the solicitor had left. At 4.00 am on 23 February Ali made another statement. He described meeting KP and Charlton in a public house in the first week of July 1981. He went with 2 girls to a sex party in the basement flat at the invitation of Charlton. He did not describe KP's death. The police told him that they knew his account to be untrue because they had a statement from D. Parts of her statement were read to him. When asked if he had taken part in KP's death he admitted holding her hands while Charlton strangled her.

17. Following his arrest on suspicion of the murder at 07:55 am, Idris Ali underwent a total of 14 taped interviews, with a solicitor present from the third interview onwards, over the following three days. In evidence he claimed that much of what he said was untrue. First, he stated that D told him KP was captive at Fitzhamon Embankment. He went to the flat and saw her on the bed. Charlton jumped on her and strangled her; Charlton punched Ali and made him hold her hands. They put the body in the cupboard and four days later Ali helped to bury her. On the next tape, he confirmed

his earlier account and added that D had been with him when he saw KP tied to the bed but not when he and Charlton buried her.

18. In the early afternoon of 23 February, Ali became angry because D (who was being questioned at about the same time) had been released and he was still in custody. He spoke with the police; Detective Inspector Mouncher took notes. He claimed that he was now telling the whole truth. On the evening of 23 February he had a supervised visit with Rachel Angove (his wife by the time of the trial). She encouraged him to tell the truth. He repeated, in the presence of PC Mitchell, what he had previously said in front of Mouncher. He identified Charlton and stated that he was scared of him.

19. D was offered the opportunity of attending an identification parade in relation to one of the men she was describing (thought to be Ali) but preferred a confrontation. On 24 February, with their solicitors present, she and Ali were brought together. He identified her as the D for whom he had acted as a 'pimp'. She did not identify him.

20. There followed eight interviews of Ali with his solicitor present on 24 February. He repeated that his association with KP included sex, glue-sniffing and prostitution. On Tape 7 Ali stated that on the day of her murder KP was on the bed and her legs were tied with bootlaces. She wore a bra, but no top and her jeans were undone. He repeated that Charlton strangled her on the bed while he held her hands and that D tried to undo the laces.

21. On Tape 8 Ali claimed for the first time that he tried to run away. When challenged, his account changed again. He stated that Charlton had invited him into the bedroom; that KP's hands were tied and that he untied her hands. He spoke to his solicitor alone. On Tape 9, Ali said that he had been punched to the floor by Charlton and assaulted. He held KP's hands above her head and Charlton strangled her to muffle her screams. She was killed because she was going to 'grass' on everyone. Charlton untied KP after he had killed her. He and Charlton had broken her bones when they took her from the cupboard. Again he was challenged. Ali stated he would tell the full story if he was granted immunity. He then stated that KP was ranting and raving about going to the police, Charlton then flipped and gripped her by the throat. D had held KP's legs and been present at the burial.

22. After a short break on Tape 10, he stated that when he and D arrived at the flat KP was on the bed but not tied up. She was badly bruised. Charlton wanted to run the girls but KP asked to be let out. She blamed Ali for being kept there and threatened to go to the police. Charlton flew into a rage and punched and kicked her in the face. She was concussed and rolled up into a ball. Charlton dragged her by the hair and knocked Ali to the floor. Charlton started to strangle her; when Ali tried to intervene, Charlton back-handed him. Charlton made Ali hold her hands; and D her legs. This interview ended at 11.30pm. He was allowed a shower.

23. Tape 11 started just before midnight. Ali introduced several new details for example that Charlton had said that if KP walked out that he and Ali would be done for the sex sessions. In relation to the killing, Ali said that KP's face was smashed up, that when he and D held her she was unconscious. After the burial D warned him that they could not go to the police because they were both present when KP was killed and buried.

24. On 25 February, PC Mumford called Ali's solicitor, then went with PC Ward to Ali's cell at 10.55am. He conferred with his solicitor. On Tape 12, he declined to sign the police officers' notes of the conversation and accused the police of pressurising him. He stated that both he and Charlton were innocent, he had never met Charlton, D was a liar, he had never been to Fitzhamon Embankment and he was not involved in the murder. He was allowed contact with his solicitor, wife and son and a five hour break.

25. Tape 13 started at 5.41pm. He returned to his earlier admissions, i.e. that KP was screaming and naked on the bed. She threatened to go to the police and Charlton was punching her in order to stop her. When she was either dead or unconscious Charlton strangled her while Ali held her hands and D held her feet. No knife was used. Ali denied that stripping for photographs was the reason for the assault as alleged by D. He repeated that Charlton made him strangle and cut her. He denied, admitted and denied that he had sex with her body.

26. Tape 14 followed a 10 minute break. Ali stated that D's version was true save for the allegation of his having sex with KP. He stated that Charlton tried to force him to have sex with her and got angry when he refused. Charlton had sex with her (while she was alive) and Charlton forced Ali to kill her. Ali put his hands around her throat and squeezed. Her hands were tied behind her back. Ali stated that he cut her cheek with a knife; that D cut her, both forced by Charlton. D was as involved in the death as he was. Charlton did not go out and get a carpet, and there was no curtain wire. The body was left in the cupboard for four days. All three of them buried her.

Other evidence of admissions

27. There was other evidence of admissions by Ali:

    i) After the conclusion of the final tape, PC Soden overheard Ali in conversation with two inmates awaiting a shower. Ali said that Charlton had made him do it – and that Charlton 'was a psycho and would have done him if he hadn't'.

    ii) PC Davies said Ali asked Charlton's whereabouts because he feared Charlton would kill him. He insisted it was all Charlton's fault: he made him do it.

    iii) PS Warwick told Ali he would feel better after some sleep but Ali said he would never feel better after what he had done: namely he had been forced to strangle KP.

    iv) Dr Reeves examined Ali and Ali told him that Charlton had beaten KP unconscious for refusing to strip for photos and had sex with her. When KP came round she wanted to accuse Charlton of rape. There was a row and Charlton forced him to strangle her.

    v) Prison Officer Thomas said Ali told him Charlton made him kill the girl.

The Defence case

Ali

28. Ali agreed the remains were those of KP and that he had been present when Charlton beat her to death, but that he (Ali) had not touched her until after her death. He gave

evidence which accorded with the account given by D. Initially he had thought of running a defence of 'police stitch up' and that is why he had tried to deny knowing Charlton. Charlton was on the same landing as him in prison and he, Charlton, suggested alleging police pressure and to make out that KP died from drug abuse. In fact she was killed because she would not strip for photos. It was a lie that she threatened to 'grass' on anyone.

Charlton

29. Charlton's defence was that he did not know KP or his co-accused or D and the prosecution could not prove the identification of the remains. He did not give evidence.

Summing up

30. In a summing up that was a model of fairness and careful analysis, Rose J identified to the jury seven categories of evidence which they might think were capable of supporting D's account:

i) The location of the grave just outside Charlton's back door overlooked by a window in his flat;

ii) The fact that the carpet in which Karen was tied was identical to Charlton's carpet and possibly an off cut from it;

iii) Charlton's gardening activities over the site of the grave and any proven lies in his interview;

iv) Charlton's association with Idris Ali and any proven lies in interview;

v) Charlton's association with KP and any proven lies in interview;

vi) Ashong's evidence of a cell confession;

vii) Ali's evidence at trial.

First appeal: judgment delivered 11 November 1994

Grounds for Charlton

31. Charlton advanced three grounds:

i) A material misdirection on corroboration and manslaughter;

ii) The evidence of D was so unsatisfactory the verdict was unsafe; and

iii) Fresh evidence suggested that KP might have died in 1982 not 1981.

32. The court rejected all three. It recognised that D was central to the case against Charlton, but, despite the careful examination by Mr Elias QC (who represented Charlton at trial and on his appeal) of the way D's accounts had changed and her treatment at the hands of the police, the court refused to declare the conviction unsafe. The court also rejected the assertion that if Ali's appeal was allowed Charlton's conviction must be quashed. Henry LJ, giving the judgment of the court, observed that Rose J had directed the jury in clear terms that Ali's interviews were not evidence against Charlton and that, if the case against Charlton depended on Ali's evidence in court, the jury would not "for one moment contemplate convicting Charlton".

Grounds for Ali

33. The principal ground of appeal for Ali, then represented by Mr John Charles Rees QC, was that certain interviews were so tainted with impropriety and breaches of the Police and Criminal Evidence Act 1984 ("PACE") and Code C that trial counsel should have made an application to exclude them. The court accepted that there was considerable material upon which to attack the admissibility of some of interviews. It was critical of the way the officers questioned Ali, a 'voluntary witness', after his solicitor had left and into the small hours. Further, they found breaches of the Code as to Ali's treatment as a suspect, doubted the purpose of the Mumford visit to the cell and described 14 tapes as excessive and demanding of an explanation. Nevertheless, the court accepted the explanation of the decision by Mr Backhouse QC (who had represented Ali at his trial) not to challenge the interviews (a tactical decision which had been discussed with Ali) as reasonable. He explained that not all the confessions were necessarily inadmissible and the defence in the recent case of Miller (the Lynette White murder trial), in which he was also involved, failed to persuade the trial judge to exclude evidence despite allegations of graver police misconduct.

34. The court received fresh evidence from Drs Gudjonsson and Tunstall (both consultant psychologists) as to Ali's intellectual capacity. He suffers from a borderline mental handicap that would not be immediately obvious to layman. Tests show him to be compliant albeit not unduly suggestible. The court held this was credible and admissible evidence that might have had an impact on the verdict. It quashed the conviction and ordered a re-trial.

Retrial of Ali

35. At the re-trial Ali was again represented by Mr John Charles Rees who was therefore in full command of the fresh evidence as to Ali's mental capacity, and aware of the reasonable prospect of persuading the trial judge to exclude some, if not all, of the evidence of confession to police officers. Mr Rees was also aware (as Mr Backhouse had been) of other confession evidence for which there were no grounds to exclude. Mr Rees has helpfully explained, as best he can now recall and consistent with the fact that Ali has not waived privilege, the circumstances in which Ali decided to plead guilty.

36. His letter to the Commission of 4 November 2014 concludes:

> "As far as I am concerned, Mr Ali was fit to plead, knew what he was doing, intended to plead guilty to manslaughter and did so without

> equivocation, having received proper advice from myself and instructing solicitor. He was offered no inducement and was placed under no pressure by anyone. He pleaded guilty of his own free will…"

37. He described Ali as 'street wise and used to the criminal justice system'. A basis of plea was drafted in accordance with Ali's instructions. Prosecuting counsel, then Mr John Griffith Williams QC, produced a document explaining in some detail the Crown's reason for accepting the plea subject to the judge's approval. The agreed basis of plea read as follows:

i. At the time Karen Price was killed by Alan Charlton, Idris Ali was just 16 years of age. He was about 5 feet 7 inches tall and of slight build. By contrast, Charlton was 21 years of age, was of very heavy build and worked as a doorman. He was described by the Prosecution as a psychopath.

ii. Idris Ali suffers from a significant intellectual impairment. He is, and was at all material times, of borderline mental handicap.

iii. Idris Ali knew Karen Price from a school that they attended together. At the time of the killing, Karen Price and D were absconders from Maes-Yr-Eglwys Assessment Centre, Church Village. In order to obtain money for their daily living needs they had sex with men for money. They did so on a number of occasions before Idris Ali received any money from them. On a small number of occasions thereafter they gave him half of their modest earnings. D gave him £5.00 on two occasions. He did not lead either of them into prostitution. He did not force either of them to become or act as a prostitute. They gave him money because he was a young friend of theirs.

iv. D's account of the killing of Karen Price is an accurate account of what took place. Idris Ali, Charlton, Karen Price and D were at Charlton's flat when Charlton asked Karen and D to get into bed together so that he could take photographs of them. When D refused he slapped her. Karen tried to help her whereupon Charlton struck her to the floor and proceeded to slap and punch her. Idris Ali caught hold of the back of Charlton and tried to pull him off of Karen. Charlton was too strong for him. He struck Idris Ali a number of times and then forced him, under the threat of violence, to hold Karen's hands whilst he continued to slap and punch her. Idris Ali did so for a very short time. He did not intend to cause Karen serious harm nor did he intend that Charlton should cause her serious harm. He acted as he did out of fear of Charlton. Charlton attempted to force Idris Ali to have sexual intercourse with Karen Price when she was unconscious or possibly dead. In fact, Idris Ali simulated sexual intercourse with her. He did not want to do so and felt sickened by it. Charlton also forced Idris Ali to assist him in burying Karen Price in the garden of this home.

v. The killing of Karen Price played on Idris Ali's mind. He did not know what to do. He lived in fear of Charlton and was afraid that he had been implicated in her death. On the evening of the 15th February 1990 he viewed the Crimewatch programme. Shortly thereafter he contacted the Police and informed them that it was his belief that the remains of a girl that had been found buried near the back

door of the basement flat at 29 Fitzhamon Embankment were those of Karen Price. If he had not done so her death might have remained a mystery."

Associated cases

R v O'Brien and others [2000] EWCA Crim 3
Facts of Saunders murder

38. Phillip Saunders was attacked and robbed at his home at Anstee Court, Cardiff on the night of 12 October 1987 at about 11.20pm. In June/July 1998 Darren Hall, Michael O'Brien and Ellis Sherwood were tried for robbery and murder. Hall pleaded guilty to robbery and offered to plead to manslaughter but this was not acceptable to the prosecution. The jury convicted O'Brien and Sherwood of the robbery and all three of murder by 10-2. In 1990 their renewed applications for permission to appeal against conviction were refused. The CCRC referred their cases to the Court of Appeal Criminal Division ("CACD") and the appeals were decided in January 2000.

Prosecution case

39. The prosecution case was that all three went to Mr Saunders's home, took part in the robbery and killed him with blows to the head. The case against Hall was based principally on his answers in police interviews and alleged admissions to a prison officer while on remand and in conversation with a man called Ricky Forde. Against Sherwood, the prosecution relied on alleged admissions to Christopher Chick and his partner Helen Morris, and others to Catriona Morgan, Robert Bradley and Ricky Shane Forde. Paul Lewis said he borrowed a jacket from Sherwood which had traces of blood on it. What the CACD described as 'the final and most powerful piece of evidence against Sherwood' was from DI Lewis (involved in the present case) of an overheard conversation between Sherwood and O'Brien. O'Brien allegedly said he could not hold out much longer and would have to tell the police the truth. He asked Sherwood why he did not tell the police what had happened and received the answer 'I can't, can I? If Hall hadn't opened his mouth we wouldn't be here.' Against O'Brien the prosecution relied on that and alleged admissions to Chick and Morris.

Defence case

40. Hall gave evidence. He admitted he had planned the robbery of Mr Saunders. He went with the other two to Anstee Court where he acted as a look out. He had not intended Saunders to be killed or seriously hurt, but heard sounds which seemed like someone being struck with a shovel. He had received £70 from the robbery. Sherwood and O'Brien gave evidence that they had never gone to Anstee Court. All three of them had met up and remained together until about 11.30pm. They had then gone to the home of a friend, Richard Yates. Hall had gone to a friend of his.

Appeals by O'Brien Hall and Sherwood

41. By the time of the appeal a number of the prosecution witnesses had retracted their evidence but, given their refusal to co-operate with the CCRC, and the absence of any explanation, the CACD put no great weight on this. Some, like Chick and Morris,

who also claimed to have been subject to pressure from the police, had already purported to retract their evidence at trial.

42. The focus of the appeals was evidence of police misconduct and the admissibility of Hall's confessions and admissions. The court had the benefit of a report into the case by Detective Superintendent Partridge of Thames Valley Police commissioned by the CCRC. He identified a number of officers whom he thought had neglected their duty.

43. His report revealed evidence of a practice at Canton police station of denying suspects access to legal representation and handcuffing them to radiators. In the case of the three appellants, there were clear breaches of PACE including unexplained entries in the custody records, unaccounted for periods in custody when O'Brien claimed he had been interviewed off the record, and the possible handcuffing of O'Brien and Hall to radiators. The court was particularly concerned that a number of important original documents had gone missing. It also considered allegations of misconduct made against police officers (including DI Lewis) at the trial of R v Griffiths in 1983, known as the Welsh Bomber's trial. Mr Elias, who had been junior counsel for the Crown at the Griffiths trial, conceded that it was clear at the Griffiths trial "there had been some monkey business" in relation to typed copies of manuscript notes by someone, albeit not necessarily by members of the South Wales police.

44. In the light of this material, the court did not declare itself satisfied that DI Lewis' evidence of the overheard conversation between O'Brien and Sherwood must be false, but did conclude that cross examination of him might have been more effective if all the information had been known. The court also said that admissions by O'Brien to the police would 'now be inadmissible as against him because of grave breaches of PACE'. The gravest of these was that he had been handcuffed to a radiator and a desk.

45. By the time of the appeal Hall had purported to withdraw his previous admissions. Fresh evidence showed that he was of low self-esteem, had a tendency to be suggestible or compliant, showed many of the features of a pathological liar and vulnerable to the effects of a protracted and pressured police interrogation. The evidence of Hall's admissions to the police would only have been admissible if s.76 of PACE was satisfied. The conclusion of the CACD seems to have been that they were not satisfied it was. If the jury had heard the admissions and the new evidence, the court felt they would probably have taken a different view of the reliability of what Hall had said (both against his own interests and the interests of his co-accused). All the convictions were quashed.

46. We were invited to pay close attention to two passages in particular from the judgment:

> "The vice of the practices followed at Canton Police Station at that time are that it becomes impossible for a court to be sure that admissions have been fairly and properly obtained, or, when the admissions are made by vulnerable persons, that the admissions represent the truth. In this case, it cannot be seen that in the substantial periods of time unaccounted for in the custody and interview records, the appellants were not being interviewed "off the record", as O'Brien claimed in his evidence to the jury happened to him, or that Hall was not having his "ego massaged" as was suggested by Mr Mumford

> when he gave evidence. Nor can this court be sure that admissions were not made by Hall because of the pressure of being interviewed several times whilst being held "incommunicado", and because he believed that the admissions he was making represented the playing by him of a minor role in the robbery and murder of Mr Saunders which would lead to a short prison sentence. It is not the fact that the codes were breached that is important; it is the reality of what occurred or may have occurred. It is for the respondents to satisfy us so that we are sure that the confessions by Hall and the admissions by O'Brien of having been to Anstee Court were not obtained in consequence of anything said or done which was likely in the circumstances existing at the time to render unreliable that confession, see s. 76(2) of the Police and Criminal Evidence Act, 1984. The appellants were interviewed without their solicitors being present. The exact whereabouts of the appellants prior to several of the important interviews are unknown because those whereabouts were not recorded. Implementation of the codes not only protects detainees it also assists the police in that where admissions are made, it becomes highly unlikely that those admissions will not be given in evidence and accepted by the jury and the court or that such admissions could be undermined on appeal."

47. On the 'role of the court' the CACD observed:

> "The Court has to decide whether these convictions are safe or unsafe. To do that we must apply the substantive criminal law that was in force at the time of the trial [presumably at the time of the offence, if different]. However, we judge the conduct of the investigation of the case, the conduct of the trial, the directions to the jury and the reliability of the evidence on which the jury acted in accordance with the standards that this court now applies, c.f. R v Mills [1998] AC 382, 397 and R v Bentley."

Events subsequent to the appeal of O'Brien and others

48. Michael O'Brien brought a claim against the South Wales Police for malicious prosecution and misfeasance in public office. In the course of that civil litigation there was an issue as to whether O'Brien could rely on similar fact evidence. O'Brien wished to refer to R v Ali and Charlton and R v Griffiths. He said that both cases also showed misbehaviour by police officers including DI Lewis. At a case management conference HHJ Graham Jones (sitting as a DHCJ) allowed O'Brien to rely on this evidence. His decision was upheld by the CA Civil Division (O'Brien v Chief Constable of South Wales [2003] EWCA Civ 1085). The House of Lords upheld the decision of the Court of Appeal at [2005] UKHL 26. Ultimately, O'Brien received a substantial sum in compensation but we are unaware of what, if any, findings of misconduct were made.

49. The CPS decided not to prosecute any of the officers involved in the Saunders investigation. The CCRC note that O'Brien unsuccessfully tried to judicially review that decision: R (on the application of O'Brien) v DPP [2013] EWHC 3741 (Admin).

R v Paris, Abdullahi and Miller [1993] 97 Cr. App. R. 99

Facts of Lynette White murder

50. Lynette White was a Cardiff prostitute who was found dead in a flat on 14 February 1988. She had been stabbed at least 50 times, her wrists and throat cut. Inquiries produced few results until in November/December 1988 three witnesses came forward. They were Vilday (a prostitute who was the tenant of the flat and had taken the police to the scene), Psaila (another prostitute who lived close by), and Grommek (who lived in the flat above).

51. Eventually Vilday and Psaila identified five men as being in the room at the relevant time: John and Ronnie Actie (who were subsequently acquitted by the jury), Miller, Paris and Abdullahi. Vilday and Psaila changed their accounts on a number of occasions but, in their final evidence, they said that each of the appellants was involved in the murder. There was no forensic evidence against the five accused. None of their blood matched any of the blood-staining found at the scene; nor was any of Lynette's blood traced to any of their clothes or possessions. There was evidence of blood present at the scene from an unidentified male.

Prosecution case

52. Miller had lived with Lynette until shortly before her death. The case against him was based on: the evidence of Vilday and Psaila, Miller's interviews and the subsequent admissions of two women who visited him in prison.

53. The interviews were crucially important. He was interviewed for 13 hours over five days. There were 19 tapes. A solicitor was present from interview 3 onwards. There was an application at the trial to exclude the content of these interviews on the basis that, to the extent that they amounted to a confession, it had been obtained by oppression. The judge ruled against that application (as mentioned by Mr Backhouse to this court in the first appeal of Charlton and Ali in 1994).

54. The case against Paris was based on the evidence of Vilday or Psaila. It was also based on a subsequent admission made to a fellow prisoner, Albert Massey. Further, Miller's confessions strongly and repeatedly implicated Paris albeit what he said in interview was not evidence against Paris. The case against Abdullahi came from Grommek, Vilday and Psaila. Other evidence against Abdullahi was retracted. He too was strongly and repeatedly implicated in Miller's interviews.

Appeal

55. On appeal the principal reason for the quashing of all three convictions was the ruling that Miller's confessions were obtained by oppression. At the outset, we note that the three admissions on which the prosecution relied did not come until tapes 18 and 19. Moreover, none of them might be regarded as unequivocal admissions in any event.

56. The sequence of events was this. From tapes 1-7, Miller denied both participation and presence. On tapes 8 and 9 he began to accept that he was present. Thereafter, having denied involvement well over three hundred times, he was finally persuaded to make the three admissions noted above on tapes 18 and 19.

57. The focus of the CACD was on tape 7, the last interview before Miller began to admit his presence at the scene. The CACD say they were "horrified" at the way in which Miller was bullied and hectored by DC Greenwood during that interview, including shouting at him what the police wanted him to say. The court observed: "Short of physical violence, it is hard to conceive of a more hostile and intimidating approach by officers to a suspect." The CACD concluded that it was significant that in the very next interview (tape 8) Miller was persuaded to concede that under the effects of drugs, it was possible he was there and did not remember it clearly. The CACD concluded that, having considered "the tenor and length of the interviews taken as a whole", they would have been oppressive, and confessions obtained in consequence of them, would have been unreliable, even with a suspect of normal mental capacity. On that point, the evidence on the voire dire from Dr Gudjonsson was that he was on the borderline of mental handicap with an IQ of 75. The CACD also noted that, although tape 7 was played to the judge, it was only played up to page 17 of the transcript and the bullying and shouting was from page 20 onwards. There was no explanation for that and the CACD said that, if the judge had heard the rest of the tape, he would not have admitted the contents.

58. It is clear that the bullying in interview 7 was the cornerstone of the CACD judgment. More widely, the CACD note that Miller was crying and sobbing but was given no respite. Although he said he was happy to continue, it appeared clear that that was because he wanted to get to the end of the questioning. His solicitor was criticised for failing to intervene.

59. Accordingly, in relation to Miller, the CACD had no doubt that the impact of the lengthy interviews and the emphasis placed upon them by the Crown, was critical. Those interviews were wrongly admitted. The CACD concluded that what remained, even taking account of the evidence of the two women who visited him subsequently, could not safely support a conviction.

60. As to Paris and Abdullahi, it was conceded by the Crown that, if the CACD concluded that Miller's interviews were inadmissible, the verdicts in respect of Paris and Abdullahi could not be regarded as safe and satisfactory. There was material to suggest that, although the judge directed the jury not to have regard to Miller's interviews when considering the case against Paris and Abdullahi, they did just that. In addition, the evidence against Paris and Abdullahi, leaving aside the interviews, was "by no means compelling".

Events subsequent to the Paris, Abdullahi and Miller appeal

61. After the appeal, the police initially put out a statement that they were not looking for anyone else for Lynette White's murder. It was not until some time later, as a result of a cold cases review, that it was re-investigated. DNA evidence which had not been available in the 1980s/90s led to the identification, arrest, confession and ultimate conviction of Gafoor, in July 2003.

62. Vilday, Psaila and Grommek were convicted of perjury in 2008 and sentenced to 18 months imprisonment. The subsequent trial of Mouncher and others, some of those policemen involved in the Lynette White murder inquiry, on charges of conspiracy to pervert the course of justice and perjury, ran from July to December 2011. We have been referred to some of the prosecution opening in that case and the allegations made

against the officers. No findings were made because the trial collapsed because of problems with disclosure. A civil claim by some of the prosecuted police officers has been tried. Judgment has been reserved.

CCRC review of the convictions of Charlton and Ali

63. The CCRC carried out an extremely thorough review of the three police inquiries, in particular the police inquiry into KP's murder. We do not intend to rehearse the reports' conclusions in their entirety; we shall focus on the material gathered that is said to undermine the safety of these convictions. We should emphasise, however, that we have read both reports with very considerable care. If we do not mention something that the CCRC considered potentially relevant to these appeals, it is because, with the assistance of counsel, we have determined that the matter is not, in fact, relevant to these appeals.

64. The CCRC analysed the extent to which there was any crossover between the evidence gathering process in this case and the investigations into the murders of Lynette White and Philip Saunders. CCRC concluded "it is possible to demonstrate a significant co-relation" between the way three inquiries conducted and that there is "a significant risk that the (police) practices demonstrable in the Lynette White and Philip Saunders inquiries occurred also during the Karen Price inquiry".

65. The CCRC noted that at the time of the investigation into Karen Price's murder the tactics that had been employed by officers in the Lynette White and Philip Saunders inquiries had not been properly scrutinised. The involvement of some of the same officers in the Karen Price murder inquiry is, the Commission considered, potentially suggestive of a "closed-minded" investigation which, ultimately, leads to the very real possibility that evidence given by various witnesses, both at trial and at crucial stages during the course of the investigation, was falsified and obtained through the use of oppressive techniques and bullying.

66. They categorised officers centrally involved in the KP inquiry and criticised in the Saunders or White inquiries as 'Category A' officers. Officers involved in the other inquiries and in the KP inquiry but not criticised have been categorised as 'Category B' officers.

67. Category A officers involved in both investigations were DI (acting DCI) Lewis, DI Mouncher, DS Rogers, DS Fenton, DC Cullen, DC Hodgson, DC Norman, DC Thomas and DC Griffiths. In particular, the CCRC describe DI Lewis as the officer in the case in both the Karen Price and Phillip Saunders investigations and subject to criticism by this court in the O'Brien appeals. DI Mouncher was the senior officer allegedly behind the "fictitious Lynette White murder scenario" and was also "centrally involved" in the KP murder inquiry at the crucial time. Essentially, it is said he spoke to potential witnesses "off the record", was behind the case theory that Charlton was guilty, conducted research into D's background and according to his desk diary spoke to her "off the record" for fifteen minutes at 15.30 on 23 February 1990 before her arrest. DS Rogers was centrally involved in the Saunders inquiry. He was accused of taking false evidence from witnesses, interviewing a witness "off the record" immediately before he provided an incriminating statement and, with DI Lewis, pressurising a witness to change her evidence.

68. The CCRC lists and considers the role of a number of other officers who were involved in the other two inquiries (and accused of improper conduct, for example putting pressure on witnesses) who were also involved in the KP investigation. They include DC Cullen. DC Cullen took statements from witnesses including Morris. Morris alleged that DC Cullen pressurised her into making a statement incriminating O'Brien and others. This was robustly denied by DC Cullen herself. DC Cullen, with DC Taylor (neither category A or B), were responsible for the lengthy interviews of D that feature so prominently in this case.

69. The CCRC gave a number of examples of what they considered parallels from the Saunders and White inquiries and the KP investigation. They include:

    i) The extensive questioning of D as a voluntary witness and what allegedly happened to Chick and Morris in the Phillip Saunders investigation.

    ii) The uncertainty as to the time when D was picked up on the morning of 23 February 1990 with the similar imprecision as to times of detention in the Phillip Saunders case.

    iii) The obtaining of a cell confession from Philip Ashong and Aquilina (not used) against Charlton and the alleged cell confessions by Hall and Sherwood.

    iv) The treatment of D as a witness and Jack Ellis in the Lynette White investigation. Mr Ellis has complained subsequently of his being interviewed repeatedly when tired and of being put under intolerable pressure.

    v) The involvement of DC Cullen who interviewed D (with DC Taylor) both before and after her arrest and took her third incriminating statement from her and DC Cullen's involvement in the Saunders murder inquiry.

70. The CCRC note that some of the original handwritten exhibits in the O'Brien prosecution had disappeared, as have the handwritten originals of D's critical third statement. Other documents are no longer available, for example, contemporaneous notes from pocket books as to the treatment of D before she was arrested. The only note in relation to this period of time is the one in Mouncher's desk diary of an "off the record" conversation with her shortly before her arrest.

71. Ultimately, the CCRC concluded "it is possible to speculate" the investigating officers in the KP inquiry were 'infected' by the prevalent culture in the murder squad and may have behaved inappropriately towards witnesses in ways that cannot now be discovered.

72. The CCRC believe that the material from the other investigations now available could have been the basis for an abuse of process application to stay the proceedings. At the very least it could have been used to undermine the credibility of the witnesses. Further, they suggest that Ali's evidence was so prejudicial to Charlton it should have been excluded from the trial and that just as the inadmissibility of the Hall confessions adversely affected the trial of his co-defendants, O'Brien and Sherwood, so the inadmissibility of Ali's confessions adversely affected Charlton's conviction.

Appeal of Charlton

73. Ms Blackwell QC advances the following grounds of appeal for Charlton:

i) The legitimacy of the police investigation into the murder of Karen Price is damaged by new information not available at trial.

ii) There is a real risk that police officers pursued a closed-minded investigation such that it amounts to police malfeasance.

iii) Concerning parallels can be drawn between the inquiry into the murder of Karen Price and the investigations conducted by relevant officers into the murders of Lynette White and Phillip Saunders.

iv) The techniques and tactics adopted by police officers were in breach of the spirit and in some cases the letter of PACE and Code of Practice C.

v) The credibility of a number of witnesses who gave evidence for the Crown is damaged to the extent that their testimony cannot be relied upon.

vi) A number of vulnerable witnesses were pressurized by officers into providing witness statements or giving evidence at trial.

vii) The risk of police malfeasance is such that had the defence known of it at the time of the trial, an application for a stay on the grounds of an abuse of process is likely to have been before trial, and/or at half time.

viii) The matters now known would have provided the defence with powerful cross examination of police officers and witnesses, particularly DI Mouncher, Tooby, Cullen, Taylor and D.

ix) The matters now known would have allowed the defence to pursue far more powerfully, the defence that the allegations made by various witnesses were untrue and that the Crown's case was based on a fiction.

x) The evidence of the second Appellant was prejudicial to the first Appellant, and in line with his successful Appeal, should have been excluded under Section 78 PACE.

xi) The verdict in respect of the first Appellant is unsafe as an abuse of process.

xii) Alternatively the verdict in respect of the first Appellant is unsafe as the jury convicted in the absence of knowledge of the matters now known.

74. In order to understand the manner in which Ms Blackwell insists D's evidence was "extracted" from her, she invited us to look at a much wider picture and to understand the pressures, both internal and external, upon the officers conducting the murder enquiry, similar pressures to the Lynette White murder inquiry. Once KP's body had been discovered and identified, there was "considerable pressure" upon the investigating team to finalise the matter, to make an arrest and achieve a successful resolution. When the murder squad found D, the investigation took what Ms Blackwell called an 'unlawful and sinister turn'. She claims the officers developed a theory that Charlton (and Ali) were responsible, ignored other possibilities and sought

out witnesses in an attempt to make an association between the first Appellant and KP and to discredit Charlton.

75. She claims the process of incriminating Charlton began on 30 January 1990 with a statement taken from Beverley Rees. It continued throughout February 1990 up to and including bringing D into the police station. She relied upon an analysis of the treatment of various witnesses including those not used at trial.

Witnesses called at trial

76. Elizabeth Williams made four statements. In a statement dated 8 February 1990, she stated that she knew the girls from Maes-yr-Ewglys. D had spoken about her boyfriend, Alan, 29 years old, a muscle man and working as a bouncer in about May or June 1981. In a statement taken the next day, dated 9 February 1990, she stated that she, Williams, had run away from Maes-yr-Ewglys on 29 July 1981 with D, that D was the leader and KP the follower, that D and KP had sniffed glue together and that D had taken KP to a flat in Riverside but that KP had "played up". Further she claimed that D had shown her the house on Fitzhamon Embankment where Alan lived, that D had said that they could stay at the premises in either Alan's flat or another flat there and that she had seen D talking to Alan on the door at the Excel Club when they had run away in July 1981. She described Alan consistent with the Appellant's general appearance. The changes between these two statements included: knowledge of "Alan's" address and place of work and having met him personally. During this statement taking process it is apparent that Williams had extensive contact with the police over three consecutive days, during which time her evidence changed. Ms Blackwell suggested this was suspicious in that the changes supported the theory of a close connection between Alan, KP and D.

77. Jane R gave a total of four statements. The first was on 1st February 1990. She stated that she had been a resident at Maes-yr-Ewglys at the relevant time and knew D. She did not remember KP from the photograph that she had been shown; she had run away regularly and gone to Astey's Café; she remembered one night when she had run away and spent the night with a man at a bedsit, possibly with D, but she did not know the location of the bedsit. Thereafter, police officers drove her to Fitzhamon Embankment together with Elizabeth Williams in order to identify the bedsit. In her second statement she gave details of D as a sexually experienced girl and said Fitzhamon Embankment might have been the place where a party took place.

78. On 25th February, Jane R was with police officers being interviewed about her previous statements. She did not make a further statement that day. Officers reported that she had claimed that at 29 Fitzhamon Embankment she had been subjected to a serious sexual assault.

79. Her next statement is dated 5 March 1990 and deals with the lack of identification of the Appellant at the identification parade. On 7 March 1990 Jane R gave her fourth statement. This statement states that she has been talking with DC Griffiths (criticised in the other murder enquiries) and for the first time she gives details of the Appellants being her 'pimps'; claims that she was infatuated with the first Appellant; that she was raped by the Appellants and a third man, and at the conclusion of the rape Ali had threatened that she would be killed if she told anybody what had happened. This part of her account was not given before the jury. The significance of it is said to be that it

shows a similar pattern of statement-taking which mirrors that with respect to D and other witnesses in all three murder enquiries. Her contact with the police produced a stream of changing evidence which helped the police theory as to the murder of KP.

80. Philip Ashong was visited in prison by officers most of whom are allegedly tainted by their involvement in the Philip Saunders, and Lynette White murder enquiries. Ms Blackwell called the manner in which Ashong came to give his statement are highly questionable, and maintains it bears a considerable likeness to the confession evidence in the Lynette White and Philip Saunders' murder enquiries.

Witnesses not used at trial

81. Unusually, a great deal of time was spent in the CCRC report and in written submissions considering the contents of statements and the circumstances in which they were made by witnesses not called at trial. The defence argue the analysis reveals the closed minds of the investigating team and their willingness to speak to witnesses "off the record" to get them to give incriminating evidence and, where they do not, to change their account.

82. In her oral submissions, Ms Blackwell focussed on two: Debbie Myles and Beverley Rees. Debbie Myles made her first statement on 27 January 1990 to DC Tooby (involved in the investigation of the murder of Lynette White). She was a resident at Maes-yr-Ewglys and may have come across KP there. She ran away with another girl, (whom the police believed was KP). When she and the other girl ran away, they met a boy called Adrian, who was white, slim with brushed back blonde hair. DC Tooby and DC Haines (also involved in the investigation of the murder of Lynette White) drove this witness around Cardiff in an attempt to identify important places with regards to "Adrian". Ms Blackwell argued that, two weeks or so later, the second Appellant in his first statement of 19th February 1990 effectively placed himself as "Adrian", albeit he is not white.

83. On 4 February 1990, Debbie Myles made a second statement to DC Tooby. She was taken to a location (Moira Park, Cardiff) by DCs Tooby and Haines which she claimed to recognize as the place to which she went with "Adrian" to see his mother. Ali's mother did not live in this area. On 6 February 1990 she made a third statement dealing with the other girl being KP and on 15 February 1990 she made a fourth and final statement. It seems likely that this statement was made earlier in the day on which Idris Ali phoned the police after the Crimewatch programme. The content was more general and in it she stated that she did not know D or Jane R, nor could she add to the details of "Adrian" which she had already given.

84. Debbie Myles did not give evidence at trial but did before the CACD in 1994. She said that DC Tooby had shown her a photograph of KP and told her that KP was the girl with whom she had run away on 2 July. She repeated that "Adrian" was white and the name Idris Ali was unknown to her. Police officers arranged a meeting between her, Debbie Myles, and Idris Ali at the police station. The confrontation took place on either 16 or 19 February 1990. In the event, Debbie Myles did not recognize Idris Ali, however Idris Ali had said "I know you Debbie".

85. Despite the fact there are no obvious signs of pressure on her to implicate Ali, and certainly no evidence that any pressure was successful, the treatment of Debbie Myles

is said to be important. We were invited to note that the confrontation mirrors the confrontation that took place between Idris Ali and D during one of her interviews. D denied knowing Ali and yet Ali claimed to know D. The suggestion is that the police then used Ali's identification of D against her, even though, by the time that confrontation took place, they knew that he had claimed to know another witness Myles who denied knowing him.

86. Beverley Rees made her first statement on 30 January 1990 in which she stated that D had spoken of having sex with a boyfriend and that the name Alan Charlton "rang bells" as that boyfriend. By the time of Beverley Rees' second statement, two days later on 1 February 1990, she stated that it was definitely Alan Charlton and that D told her that he used to assault her and her mother. This development was described as 'curious' by the CCRC.

87. We were invited to consider statements that suggested Charlton had made two further cell confessions to Alec Rankin and George Aquilina. DI Lewis and DC Carnell met Aquilina at HMP Cardiff on 27 September 1990. The importance of this evidence, given that it was not heard by the jury, is said to lie in the manner in which such evidence came to light and was developed by contact with similar police officers. It is said to increase the likelihood that such cell confession evidence was part of a police plan to gain sufficient evidence to support eye witness accounts which were themselves inherently inconsistent and weak.

88. A number of other witness statements were put before us the contents of which we do not intend to explore further because as it seems to us they are of little or no relevance. They certainly do not reveal evidence of misconduct or even a suspicion of misconduct. Ms Blackwell appeared to concede as much in her oral submissions. They indicate nothing more or less than an attempt to track KP's movements and those of her associates.

Fresh evidence since referral by the CCRC

89. A statement has recently been taken from Amanda Pinchen (who now lives abroad) who was a potential witness in the KP investigation. Having made an 'innocuous' statement, she claims she was visited by officers and questioned when tired from working nights as a nurse. There are doubts about the reliability of some of the details she has provided in the new statement but the important point we have been invited to consider is that she describes how one of the officers (possibly DI Mouncher) tried to bully her into changing her account to suggest she went out with Charlton and he "roughed her up". The officer did not succeed. This is said to mirror the treatment alleged by Mr Jack Ellis, a possible witness in the Lynette White murder.

The second appellant Ali

90. Ms Blackwell relied on the chronology of key events produced on behalf of Ali and argued that it leads to the conclusion that any information coming from the second appellant is suspect. He had his own interests to consider, he was allowed access to other witnesses and he was subjected to improper questioning. The expert psychiatric and psychological evidence showed that he was suffering from intellectual impairment, compliancy, eagerness to please and conflict avoidance.

91. The interviews of the second appellant were undoubtedly against the first appellant's interests, as was the detail of the evidence which he gave at trial. Ms Blackwell acknowledged that the Court of Appeal in 1994 addressed this issue and concluded that the evidence of the second appellant did not affect the safety of Charlton's conviction for murder. Nonetheless, she maintains that the revelations about the investigations of the Lynette White and Phillip Saunders murder cases raise fresh issues about the effect of the second appellant's evidence upon the safety of the conviction of the first appellant.

D as a vulnerable person

92. Ms Blackwell's oral submissions were focussed almost entirely on the treatment of D and a comparison between how she was treated and how witnesses in other inquiries were treated. On any view D had suffered an appalling childhood of abuse. Although twenty one and a married woman at the time she was questioned, she was being asked to re-live extremely traumatic events. She may also have been concerned about her husband discovering the true extent of her past. On that basis, Ms Blackwell categorised her as a vulnerable witness and referred us to the steps that would be taken today to protect her. Back in 1990 she was put under, what Ms Blackwell insists, was intolerable pressure by police officers who were bent on getting incriminating evidence from her against the appellants. She took us through the history of how D was treated and the information used to put pressure on her.

93. D's first statements were dated 24 January 1990 and 3 February 1990, and gave no assistance to the investigation. On 5 February 1990 DCs Cullen and Taylor submitted a report which had D at its heart. The report suggested interviewing a Teresa S in order to gain information about D. That day Teresa S made her statement. The next day DC Cullen reported to her Detective Superintendent on the Social Services Records of D. DS Fenton also reported to the Superintendent. As a result of these reports and the conferences which followed them, more enquiries were put in hand re D. On 19 February 1990 DI Mouncher submitted a thirty seven page report showing an extensive knowledge of D and her lifestyle. The report postulates that KP and D ran away together, worked as prostitutes out from the Excel Restaurant, and knew the first appellant.

94. Ms Blackwell claims that thereafter the evidence gathering process became fixed upon D and obtaining evidence from her against Charlton. She criticises the officers for using the material to persuade her, an already vulnerable witness, to give statements which would assist the police. Throughout large parts of her time at the police station, D knew that the police had access to her husband. During her interviews, she was encouraged to have contact with her husband, thereby (so it is said) 'increasing pressure' on her. Criticism is also made of her solicitor for failing to protect her sufficiently during her interviews under caution.

95. D was taken to Norbury Road Police Station as a voluntary witness on 22 February 1990. She arrived at the station at about 6.00 pm. As a witness there was no record of her presence at the police station and she did not have the benefit of any representation or assistance. From the contents of later interviews, it seems that by midnight she had admitted being a witness to the murder of KP. It then took several hours to complete her written statement. This was finished by about 5.00-5.30am. By then she had been at the police station and in the company of DCs Cullen and Taylor

for nearly 12 hours, through the night, without sleep. In later interviews she was to allege that there came a point during the night of 22/23 February when the police prevented her from going home.

96. The third statement on 23 February 1990 formed the basis of the Crown's case. It placed D at the scene of the murder and as an eye witness. It was used to 'direct' the interviews of both appellants. Once D had signed this statement, she was taken home by the police. We do not know what happened once she returned home and was allowed contact with her husband but soon thereafter she announced her intention to retract her statement, stating that it was all untrue and that it had been "extracted" from her.

97. It seems that she was back in the police station by about 8.00 am. Apart from the entry in Mouncher's diary for 3.30pm we have no record of who spoke to her during the day and what was said. It seems that she must have maintained her retraction and specifically denied presence at the death of KP and knowledge of both Appellants.

98. By 4.30pm on 23 February 1990, D was arrested for murder and held in custody. From that time we have a full record of her detention and we know what was said to her. She had representation. She was interviewed extensively. She maintained her denials for many hours, but after a number of what Ms Blackwell called 'emotionally brutal interviews' and 'the added pressure' of a conference with her husband and solicitor, D once again accepted the contents of her third statement.

99. Ms Blackwell criticises the content and tone of the interviews as argumentative, highly critical and including emotional blackmail. The tapes of interview have survived and we listened to two of them at counsel's request. From her Custody Record, we can see that although offered food and given the opportunity to rest, she may not have slept and eaten for a considerable period. Counsel compared the treatment of D with the treatment of witnesses and suspects in the Saunders and Lynette White murder investigations.

100. Ms Blackwell conceded that concerns expressed by this court on previous occasions arise out of interviews under caution of suspects (later defendants). Nonetheless, she suggested D's position is extremely similar: the reality of what occurred should be considered the same. Despite a different burden in law under sections 76 and 78 of PACE, she sought to place the burden on the Respondents to satisfy the court that D was not detained and that her evidence was not obtained in consequence of things said and done which would render her evidence unreliable.

101. Finally, she returned to the central issue in these appeals, namely the effect that the proven and suspected misconduct of the investigating team would have had upon the trial of the first appellant. She contends that the jury would have been affected in their deliberations (and so should the court) by the knowledge that many officers who were instrumental in obtaining the account of D were likely to have acted in a similar and unlawful way in other murder enquiries. What the jury did not know was that a number of these officers, and most significantly DI Mouncher, had investigated a case where at least three witnesses were prevailed upon, by the police, to give statements and ultimately evidence of an eye witness account, which subsequently was proven to be a tissue of lies.

102. In addition there is good reason to think that the pressures brought to bear on the central witnesses in the KP case, were similarly brought to bear on the peripheral witnesses.

Ali

Grounds of Appeal

103. Mr Hughes QC for Ali submitted that the twelve Grounds of Appeal identified by the CCRC in relation to Alan Charlton apply equally to Idris Ali and adopted most of Ms Blackwell's submissions. He then took us through the detail of how Ali had been treated to support the assertion that at least some of Ali's admissions and confessions can be demonstrated to have been obtained in breach of Code of Practice C to PACE.

104. He was not, however, able to tell us what Ali's instructions are today. Ali has not waived privilege and so we, and the CCRC, have been denied access to what he has told his lawyers at the various stages. It is in that light we must view what he now says.

105. In the witness statement Ali gave the Commission dated 11 April 2014, he attempted to explain his guilty plea. He insisted that he was not involved in the death of KP in any way and he knew nothing about the events that led to her death. She had stayed at his mother's house for one or two nights and that had been the last time he had seen her. He said the statement he had made on 23 February 1990 was completely untrue. Much of the information in it had been suggested by police officers. He had thought he would be allowed home after completing the statement. He had been confronted with the statement of D. He said he was untruthfully told that D was blaming him for KP's murder. The admissions he made in taped interviews were also untrue. At one point between his interviews, he had been assaulted in the cells by two police officers. He said he made admissions to other people, but they also were untrue. He said that he was advised prior to his retrial that if he pleaded guilty to manslaughter he would be released because of the time he had already spent in custody. He said,

> "By this time I had been in prison for nearly 6 years for a murder that I knew nothing about. I just wanted the whole thing to end. I pleaded guilty to manslaughter because I wanted to go home and couldn't face going through another trial."

106. Mr Hughes asked us to bear very much in mind that Ali suffered the intellectual limitations and personality traits identified by the psychologists, that he had been forced to confess to the police, he had been tried and convicted and had served the equivalent of a lengthy term of imprisonment and that his lawyers were not aware of the extent of the alleged police misconduct. On that basis Mr Hughes contends that just as Ali's accounts to the police were unreliable so we should consider his plea of guilty unreliable.

107. He gave a number of examples of what he called 'police oppression':

i) The police continued to interrogate Ali in the early hours of the 23 February 1990 despite the departure of his solicitor.

ii) No appropriate adult was present during this period.

iii) The interrogation continued throughout the night.

iv) No tape recording of other contemporaneous record was kept of what was said and done.

v) The police behaviour towards the defendant was "aggressive and deceitful" in that they deliberately refused to disclose the content of D's statement whilst also accusing Ali of being a liar.

vi) Ali was not cautioned until after he had admitted holding the hands of Karen whilst she was strangled.

vii) When the second statement of Ali was taken he was not offered legal advice.

viii) Thereafter he was not given a sufficient break from questioning.

ix) No appropriate adult or solicitor was then present for the first two following interviews.

x) The police unnecessarily visited Ali in his cell immediately prior to interview 12 on the 25th February 1990. They did so to "influence" his later account in the absence of his solicitor. No tape recording or contemporaneous note of this was made.

108. As a result, he maintains that the prosecution cannot establish that Ali's confessions were not obtained through oppression or in consequence of anything said or done which was likely, in the circumstances existing at the time, to render unreliable any confession which might be made by him in consequence thereof (see Section 76 PACE).

109. However, the allegedly oppressive way in which Ali was dealt with by the police was considered at the first appeal. His conviction was quashed. Both he and his lawyers knew that there was a reasonable prospect of obtaining a ruling that at least some of his confessions were inadmissible at his re-trial. Furthermore, the material as to Ali's mental capacity was in the hands of those lawyers at the time he pleaded guilty. We pressed Mr Hughes, therefore, to identify the true basis of Ali's appeal in the light of his unequivocal basis of plea. He fell back upon the CCRC's suggestion that, if we allowed Charlton's appeal, it would be unfair and unconscionable for Ali to be bound by his plea of guilty to manslaughter, in the context of the police investigation which led to that plea. He contends that police misconduct in this investigation, even where directed at one particular appellant, undermines the integrity of the entire investigation.

110. He invited our attention to other decisions of this court in which it was held that once fresh evidence had shown the conviction to be unsafe, it mattered not why the unequivocal plea had been entered.

111. Finally, in the light of his plea, the written grounds include the assertion that there is a real possibility that we will consider Ali's conviction to be unsafe because we cannot be sure that 'the jury' would have reached the same verdict had it knowledge of the

matters now known. As there was no jury empanelled at his re-trial, we did not follow this ground and it was not developed in the course of Mr Hughes' oral submissions.

Legal framework

Role of the court

112. In *R v Mushtaq Ahmed [2010] EWCA Crim 2899*, a case that involved evidence from a discredited pathologist, at paragraph 24, the then Vice President of the CACD Hughes LJ provided this guidance on the role of the court in a similar situation to that confronting us:

> "Although it is not critical to the outcome in this appeal, we do not in any event agree with Mr Ali's submission that it is sufficient to render a conviction unsafe that there now exists material which the jury did not have and which might have affected their decision. The responsibility for deciding whether fresh material renders a conviction unsafe is laid inescapably on this Court, which must make up its own mind. Of course it must consider the nature of the issue before the jury and such information as it can gather as to the reasoning process through which the jury will have been passing. It is likely to ask itself by way of check what impact the fresh material might have had on the jury. But in most cases of arguably fresh evidence it will be impossible to be 100% sure that it might not possibly have had some impact on the jury's deliberations, since ex hypoethesi the jury has not seen the fresh material. The question which matters is whether the fresh material causes this court to doubt the safety of the verdict of guilty. We have had the advantage of seeing the analysis of *Pendleton* [2001] UKHL 66; [2002] 1 Cr. App. R. 34 and *Dial* [2005] UKPC 4; [2005] 1 WLR 1660 made recently by this court in *Burridge* [2010] EWCA Crim 2847 (see paragraphs 99 – 101) and we entirely agree with it. Where fresh evidence is under consideration 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." (*Dial*). Both in Stafford v DPP [1974] AC 878 at 906 and in Pendleton the House of Lords rejected the proposition that the jury impact test was determinative, explaining that it was only a mechanism in a difficult case for the Court of Appeal to "test its view" as to the safety of a conviction. Lord Bingham, who gave the leading speech in *Pendleton*, was a party to *Dial*."

113. This was confirmed in *R v Noye [2011] EWCA Crim 650* and in *R v O'Meally [2015] EWCA Crim 905*.

Discredited police officers

114. In *R v Willis, 2006 EWCA 609* Lord Justice Maurice Kay said at paragraph 1:

> "This appeal comes before us as a reference by the Criminal Cases Review Commission ("CCRC") under the Criminal Appeal Act 1995. It is one of a number of appeals in which convictions have been challenged on the basis that the original police investigators and a number of police witnesses at the trial were from the Rigg Approach

> Flying Squad, several of whose members have since been discredited to a serious extent. As Judge LJ said in *Crook [2003] EWCA Crim 1272* (paragraph 22):
>
> > 'The lamentable history of the operations of the Squad [does not mean] that in every case in which a member of the Squad had given evidence or been involved in an investigation which resulted in a conviction, the conviction should be deemed to be unsafe.'"

115. In considering the conduct of the West Midlands Serious Crime Squad in *R v Foran, [2014] EWCA Crim 2047*, Lord Justice Pitchford expressed a similar conclusion of the court at paragraphs 32-34:

> "32 In August 1989 the West Midlands Police Serious Crime Squad was disbanded. There followed an investigation into its practices by the West Yorkshire Police under the supervision of the Police Complaints Authority. Efforts were made to trace all of those arrested by the Serious Crime Squad during the years between 1986 and 1989. There was revealed a catalogue of malpractice which included physical abuse, the generation of false confessions, the planting of evidence and the mishandling of informants. At least 33 convictions resulting from tainted evidence given by members of the squad have been quashed by this court including some convictions emanating from the work of officers who were or became members of the Serious Crime Squad as early as the mid-1970s, the most notorious of which were the convictions of the Birmingham Six (see *McIlkenny and Others [1991] 93 Cr App R 287*; see also *O'Toole and Murphy [2006] EWCA Crim 951 ; Wilcox [2010] EWCA Crim 1732* ; and *Dunne and Others [2001] EWCA Crim 169*).
>
> …
>
> 34 Membership by police officers of the Serious Crime Squad in the mid-1970s is not an automatic gateway to successful appeals against historic convictions obtained by evidence of confession."

116. We draw from those decisions confirmation of the well-established principle that, however extensive police misconduct may have been in a particular force, each case has to be considered on its merits. A proper analysis must be made of the evidence at trial, the extent to which there is fresh information and its impact on the safety of the conviction. Sweeping generalisations as to alleged misconduct will not suffice.

Abuse of Process for Prosecutorial Misconduct

117. In *Warren v Attorney General of Jersey [2011] 2 Cr App R 29* the Privy Council reviewed the law with regard to abuse of process in relation to prosecutorial misconduct. Two distinct forms of abuse of process were identified. The first is where the accused cannot have a fair trial, in which case there is no question of any balancing exercise. The second is where "the court's sense of justice and propriety is offended if it is asked to try the accused in the particular circumstances of the case".

An application under the second form requires the judge to perform a balancing exercise. In so doing, the Board stressed that it is necessary to keep in mind that an infinite variety of cases can arise and how the discretion should be exercised will depend on the particular circumstances of the case. It confirmed that it is "not in general the function of criminal courts to discipline the police". Despite the fact that the police were guilty of "grave prosecutorial misconduct" and the most reprehensible behaviour in bringing Warren before the court, the Board upheld a refusal of the trial judge to stay the proceedings.

Joint trial of accused

118. It is another well-established and basic principle that defendants accused of participating in the same crime generally should be tried together. It requires very exceptional circumstances to depart from that principle. In *R v Miah and Choudhury, [2011] EWCA Crim 945*, it was held that where a defendant sought to rely on the partial defence of diminished responsibility, did not give evidence and called evidence as to his mental health, (including references to what he had said about his co-defendant), this did not amount to the 'very exceptional' circumstances that would lead to separate trials.

Sections 76 and 78 of PACE

119. The manner of the questioning of either a witness or a defendant may be material in deciding on admissibility, but the legal framework for judging that issue is markedly different in the two cases. It is important to recall that a statement made to police by a witness is not ordinarily admissible. There are exceptions and they have been enlarged since the trial of these two appellants, notably by the Criminal Justice Act 2003, but the basic position remains. If the witness's statement is challenged, it is not admissible unless and until the witness gives evidence orally in court. Statements made by a defendant (at least if adverse to his or her interests) are different. They are admissible, subject to s.76 of Police and Criminal Evidence Act 1984.

120. This provides:

> "(1) In any proceedings a confession made by an accused person may be given in evidence against him in so far as it is relevant to any matter in issue in the proceedings and is not excluded by the court in pursuance of this section.
>
> (2) If, in any proceedings where the prosecution proposes to give in evidence a confession by an accused person, it is represented to the court that the confession was or may have been obtained –
>
> (a) by oppression of the person who made it, or
>
> (b) in consequence of anything said or done which was likely, in the circumstances existing at the time, to render unreliable any confession which might be made by him in consequence thereof,
>
> The court shall not allow the confession to be given in evidence against him, except in so far as the prosecution proves to the court beyond

> reasonable doubt that the confession (notwithstanding that it may be true) was not obtained as aforesaid….
>
> (8) In this section "oppression" includes torture, inhuman or degrading treatment, and the use or threat of violence (whether or not amounting to torture)."

121. So far as a witness is concerned, the out-of-court statement is not itself evidence but the testimony that the witness would be able to give can be ruled inadmissible by the Court exercising its power under s.78 of the Police and Criminal Evidence Act 1984. This provides:

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

122. There are, therefore, important differences between the two regimes. Without intending to be comprehensive, they include the following:

i) If a challenge is made to the admissibility of an out-of-court statement by a defendant, the prosecution has the burden of establishing that it was not obtained by any of the methods in s.76(2). On the other hand, it is for a defendant to persuade the court that the evidence of a prosecution witness ought to be excluded under s.78

ii) The prosecution will not successfully resist a challenge under s.76 unless they can satisfy the criminal standard of proof. On the other hand, while a defendant has the burden of persuading the court that it should exercise its power under s.78, the burden is no higher than the balance of probabilities.

iii) Both provisions address the situation where the prosecution proposes to adduce the evidence in question. Since the Criminal Justice Act 2003 there is a modified exclusionary rule for confessions by a defendant which a co-defendant seeks to adduce (see Police and Criminal Evidence Act 1984 s.76A).

Unequivocal pleas

123. There are cases where this Court has quashed a conviction as unsafe notwithstanding an unequivocal plea of guilty. The following examples have been referred to us:

i) In *R v Tania Brady [2004] EWCA Crim 2230* the appellant pleaded guilty to the robbery of an off-licence. There were two robbers, a man and a woman. The robbery was captured on CCTV. A police officer who viewed the footage identified the appellant as the female robber. She was arrested, shown the footage, agreed that she was the woman and agreed that she had committed this and a number of other robberies. She pleaded guilty. There were two women customers in the shop at the time. They were not asked to attend any kind of identification procedure. However, after the appellant was sentenced,

both wrote to say that they knew the appellant and she was not the robber. On further investigation, there was some uncertainty as to whether the police officer who had identified the appellant had been looking at stills from the robbery or some other part of the day. When the appellant was re-interviewed, she said she could not remember whether she had committed this offence or not. On appeal, the prosecution accepted that the two customers' statements should be admitted and were capable of belief. The Court referred to 'this extraordinary case', a description with which we would respectfully agree.

ii) *R v Francis Steven Boal [1992] 95 Cr. App. R. 272 CA* was a case where advice given to the appellant prior to his plea of guilty had overlooked a possible line of defence which would probably have succeeded. That is not suggested here. In giving the judgment of the court Simon Brown LJ warned that,

> "This decision must not be taken as a licence to appeal by anyone who discovers that following conviction (still less where there has been a plea of guilty) some possible line of defence has been overlooked. Only most exceptionally will this Court be prepared to intervene in such a situation. Only, in short, where it believes that the defence would quite probably have succeeded and concludes, therefore, that a clear injustice has been done. That is this case. It will not happen often."

iii) *R v John Lewis Brown [2006] EWCA Crim 141*, the Appellant pleaded guilty to the robbery of a post office which had been investigated by the West Midlands Serious Crime Squad. His case was referred to the Court by the CCRC. The prosecution accepted that he had been improperly denied a solicitor, that he had made admissions following the threat that violent associates of his would be told that he was a police informer. The Crown accepted that, had all been known at the time of trial, it would not have opposed an application for a change of plea and would have offered no evidence. In what the Court described as those 'very exceptional circumstances', the appellant's conviction was quashed despite his plea.

Discussion and Conclusions

Appeal of Charlton

124. We are prepared to accept there are substantial grounds for concern about the conduct of some of the police officers who investigated the Philip Saunders and Lynette White murders. Given the overlap between officers in those cases and officers involved in the Karen Price murder investigation, we agree with the CCRC that the circumstances of Charlton's conviction merited full and careful consideration and we are grateful to them for the extraordinarily thorough analysis they have put before the court. They have left no available stone of the investigation unturned.

125. However, our task is different. We must assess the impact of what they have discovered upon the safety of the convictions. The mere fact that inquiries made in the Karen Price investigation were carried out by officers who were also involved in the Lynette White and Phillip Saunders investigations and that criticisms can be made of

the investigation in all three cases does not automatically undermine the safety of the Appellant's conviction and/or suggest that the case would be stayed as an abuse of process. What was described as the 'lamentable' history of the operations of the South Wales Police during this period does not mean that in every case in which a member of the South Wales Police has given evidence or been involved in an investigation, the conviction should be deemed to be unsafe. Each case has to be considered on its merits. On the facts here, we must analyse what is new and how it could have been deployed, if at all, by defence counsel at trial and therefore how, if at all, it impacts upon the safety of the conviction. No approaches have been made to either counsel who appeared for the Appellants at trial as to what they did know (they both appeared in one of more of the other cases) and or what they would have done differently if they had been in full possession of the facts. That is unfortunate, and we are obliged to proceed therefore without their assistance.

126. We begin with a few general comments. First, as Mr Whittam QC for the Crown observed, there are highly significant differences between this case and the other two cases. Those differences have been wrongly dismissed as irrelevant by Ms Blackwell. None of the prosecution witnesses in this case has retracted their evidence, in contrast to the cases of O'Brien, Hall and Sherwood and Paris, Abdullahi and Miller. In particular, the main prosecution witness who was present at the time KP was killed (D) has not retracted her evidence. The CCRC, who did not apparently seek D's comments, speculate that she would not now retract her evidence for fear of the consequences. With respect, that is a leap in the dark and one for which we can find no justification. There is absolutely no reason to suppose that D, many years on, would not admit, had it been true, that her evidence to the jury was false and extracted from her under intolerable pressure. Furthermore, we have no clear breaches of PACE and its Code in the treatment of the Appellants of the kind that troubled the courts in *O'Brien and others* and *Paris and others.* There are no failures of disclosure and nothing to suggest documents may have been altered or deliberately mislaid. If the handwritten version of a statement of a witness (D's third statement) is missing and other records are no longer available there appears to be a perfectly legitimate explanation for that fact: the passage of time. It does not raise the suspicions suggested in the CCRC report or by Ms Blackwell.

127. Secondly, however closed the minds of officers in the Saunders and White investigations, we consider that the investigation into KP's death was extraordinarily thorough. Approximately 80 officers were seconded to the inquiry and every relevant expert consulted. The HOLMES database revealed many hundreds of potential witnesses spoken to, 733 statements taken, 252 reports made, 644 other documents produced, 495 messages logged and 3550 actions listed. The senior officer in overall charge of the case (who is not the subject of any criticism) participated in a Crimewatch programme in February 1990 featuring a reconstruction of KP's usual movements. The appeal was for any information that might assist. This does not suggest a close minded investigation. We further note that the very thorough inquiry has been examined in depth by the CCRC and by counsel for the appellants; they have not identified a single significant lead that was not pursued. The fact that officers continued to gather more evidence after Charlton had been identified by D is in no way deserving of criticism. We would be surprised if that was not the case. Gaps in the evidence are often filled in this way.

128. Thirdly, the fact that Charlton featured prominently in the investigation is hardly surprising given the location of the grave. The officers would have been failing in their duty if they had not considered him of significant interest given his occupancy of flat, and closeness to where the body was found. Nevertheless, they investigated as best they could the identity and whereabouts of all occupants of the house, eventually tracing all rent paying occupants.

129. Fourthly, we are also not surprised that the police formed the view D was central to their investigation. There appeared to be an interesting link between her and KP, their absconding from the home and their lifestyles. A further and possibly significant link then became apparent between Charlton and D.

130. Fifthly, a number of Ms Blackwell's submissions were based on pure speculation, no doubt because she was relying on the CCRC's findings and they frequently used the expression "it is possible to speculate" to justify those findings in their report. Speculation is no basis for an appeal.

131. Sixthly, Ms Blackwell (and the CCRC) invited us to draw the inference from the fact of police misconduct in other investigations that there must have been police misconduct in the KP investigation so that all the evidence against Charlton is tainted. This line of argument misses the point of decisions such as *Willis*, *Crook* and *Foran*, all of which emphasise the need to consider the facts of each case.

Treatment of D

132. That brings us to the treatment of D. She was a witness, not a defendant. Yet, the CCRC commented at paragraph 193 of its reference in *Charlton*'s case:

> "It is highly unusual, the Commission considers, for a voluntary witness to be questioned at a police station throughout the night, during which time a "breakthrough" witness statement is obtained. The Court of Appeal was critical of the same scenario in relation to Idris Ali, who was being questioned under similar conditions at the same time as D. Arguably, it would be anomalous to take a different view of D's treatment that night, merely on the basis of any legal distinction between the treatment of a defendant and the position of a witness."

133. It is not anomalous to treat witnesses and suspects differently for the reasons we have endeavoured to explain under the heading 'Legal Framework'. So, for example, officers may speak to potential witnesses "off the record" in a way they would not be able to do with suspects. As a general rule they do not need to provide a witness with legal representation or keep records of their time at a police station in the same way they keep custody records. They should, of course, treat all those they interview with respect and dignity and ensure vulnerable witnesses in particular receive appropriate consideration. However, their duties towards witnesses and suspects are different. With respect, both Ms Blackwell and the CCRC repeatedly failed to acknowledge sufficiently this clear distinction in law and practice.

134. The nature of questioning that elicited an account from either a witness or a defendant may, of course, be relevant. It may go to the admissibility of the evidence. It may go to its reliability. But, because of the different regimes as to admissibility discussed

above, the only way in which the evidence of D could have been kept from the jury would have been by making an application under section 78. Mr Elias did not make such an application; for good reason in our view. There was not sufficient material to justify excluding her evidence but there was considerable material with which to attack her credibility and reliability. Mr Elias knew at the time of trial the extent of D's vulnerability, the pressure she was under, the fact that she had been inconsistent and that, in her retraction period, she had accused the officers of heavy handed tactics. He deployed this to good effect in robust cross-examination of her over three days. As Rose J. noted in his summing up '[D], says Mr Elias, has much to hide about her role, and this, coupled with her suggestibility in the hands of the police totally destroys her credibility'.

135. We must determine, therefore, whether the 'new' material would now justify exclusion of D's evidence under section 78 and / or fortify cross-examination of D. Here again we are of the view that Ms Blackwell (and the CCRC) have failed to consider sufficiently the extent to which any advocate in this case could use the 'new' material to good effect.

136. First we consider an application under section 78. We must pre-suppose that, armed with the material we now have, counsel takes the tactical decision to make such an application. That would not be an easy decision. It would necessarily involve a voir dire on which D would be cross examined. If the application was unsuccessful and D gave evidence before the jury, she would be cross examined for a second time and be fore-warned as to at least some of the lines of attack. Given D's attitude at trial and her ability to withstand days of questioning, there is nothing before us to suggest she would have admitted lying in the third statement. On the contrary, we infer from her manner in the witness box on the last occasion she would have held her ground. In that case, the application was likely to be unsuccessful unless something significant was forthcoming from the officers

137. Cullen, Taylor and possibly the officer in charge of the case would probably be called in a voir dire. As far as questioning the officers is concerned, counsel would be obliged to keep it within bounds. He would not be permitted to make sweeping allegations of impropriety. He could question DC Cullen as to whether her conduct generally was influenced by the allegedly prevalent culture and about the fact she had been accused of pressurising a witness to make a statement in another case. He could ask DC Taylor whether he had been influenced by the allegedly prevalent culture. He could explore with them both the details of the time D was at the station. He could ask the officer in charge about the possibility of a close minded investigation, but he would have been in grave difficulties in putting to the officers, in the absence of material to justify it, that they had treated D improperly before she made her third statement and that they had fed her all the details of the murder.

138. We have considered carefully what happened to D during the time she was at the station from 22 to 24 February. There is nothing suspicious in the fact we have little if anything by way of records to assist us because, we repeat, she was at the station as a witness not a suspect. Had this issue been raised at trial there may well have been pocket or day books with relevant entries. It is not surprising they are no longer available twenty five years on.

139. We have some idea of what must have happened from the assertions made by her and the officers the next day and on tape. D did not dispute she was given breaks during the evening, offered refreshments and was visited by the custody officer who asked if she was 'ok'. She did not suggest she told that officer she was not 'ok' and/or demanded to go home or that she asked him for a solicitor. She did assert that she asked someone for a solicitor and that she was told she could go home if she made a statement. She also claimed the interviewing officers told her something of what Ali had said. They denied this but, even if they had revealed parts of Ali's then account, we note that she never suggested the officers provided her with the full graphic detail of the murder. She also did not dispute she had given an oral account of the murder before midnight and that it took some time thereafter (during the early hours of the next day) to get her statement into writing.

140. When pressed as to why she had made her third statement, her repeated response was simply 'I wasn't there. I was lying. I don't know why I lied.' No sensible explanation has been proffered as to how she could have known so much about the murder or why she would have given a detailed description of the murder if she was merely telling the police what they wanted to hear. We accept that, with hindsight, it was unfortunate that she remained in the station overnight for the written statement to be taken, but it was understandable that the officers wished to record in writing what she had witnessed. As for the claim made by Ms Blackwell that she was effectively being detained against her will (and should have been accorded the rights of a suspect), we have nothing from D today to suggest this was the case.

141. We turn to her treatment after she had made the third statement. At this distance in time it is impossible to discover exactly when she returned to the station and in what circumstances. She was still a witness not, at that stage, a suspect and so nothing was recorded. We have noted that DI Mouncher made an unexplained visit to her in the afternoon shortly before her arrest but it is not clear to us how that advances the appeal. He was not on duty the night before when D made her third statement. Even crediting him with the most dishonourable of motives, when he came on duty on the morning of the 24 February, as we have been invited to do, whatever he said to her that afternoon did not cause her to return to her third statement. On the contrary, for many hours thereafter she maintained that her third statement had been a lying account.

142. As for the contents of the interviews under caution we accept that criticisms can legitimately be made of the tone of some of the officers' questions, the repeated nature of the questioning, the number of hours spent and her solicitor's failure to intervene. We very much doubt that any officer would believe it right to treat a witness or suspect in that fashion today especially one with such a troubled past. Had D been charged with any offence, anything she said under caution may well have been the subject of an application to exclude. It is a moot point whether it would have succeeded. D held her own, whatever the pressure, for many hours. We have listened to some sample tapes. In our view the officers were insistent and unfortunately allowed their frustration to surface from time to time, but we were not 'horrified' in the way the court was in *Miller*. By the time she did revert to her third statement she had been allowed to rest (whether or not she was able to sleep) had been offered food and drinks, the opportunity to smoke and speak to her husband. It is pure speculation

to say she was adversely affected at that time by her undoubted lack of sleep or food as the CCRC and Ms Blackwell do.

143. Accordingly, it seems highly unlikely to us that the judge, having heard from a witness who was willing to give evidence about a murder, would deny the prosecution the opportunity of calling her. It was in the interests of justice for her to be called. All relevant and admissible material could be put before the jury for them to assess D's reliability and credibility. We have real doubts therefore as to the extent to which the new material would have bolstered an application to exclude D's evidence.

144. Similarly, we reject the assertion that the 'new' material would have made cross examination more effective. Mr Elias' cross examination was robust and thorough. Most, if not all the points now made by Ms Blackwell (save for the brief intervention of DI Mouncher) were made by Mr Elias and explored in very considerable detail. The weaknesses of her testimony were considered by this court at the first appeal.

Treatment of Ali as it affects Charlton

145. The issue of the treatment of Ali in so far as it impacts upon the safety of Charlton's conviction was an issue addressed by the court in clear terms at the first appeal. Specifically, consideration was given to the effect of any breaches of Code C and the impact on any admissions made by Ali in the light of evidence from Professor Gudjonsson and Dr Tunstall.

146. Ali was interviewed in a way the court undoubtedly found troubling. They considered it possible that some of his interviews might be excluded under section 76 of PACE. However, they did not conclude that all his admissions would be excluded and they did not (could not) suggest the trial judge could have prevented Ali giving evidence in his own defence whether via s.78 (since that only applies where it is the prosecution which proposes to adduce the evidence in question) or otherwise. Thus, Ali's account, undoubtedly prejudicial to Charlton, would have been before the jury in any event. The judge gave the jury an express and full warning about how to treat Ali's various accounts in so far as they impacted upon Charlton. Rose J. properly cautioned the jury to accept Ali's evidence only if they found it to be corroborated elsewhere. Even accepting, therefore, that the appellants' could establish a culture of police misconduct in two other investigations, unknown to the defence at the time of trial, the new material adds nothing significant in this respect.

Treatment of other witnesses

147. We accept for the reasons that we have already given, that the issues surrounding the evidence of D, and to a lesser extent the issues surrounding the evidence of Idris Ali, are central to this appeal. However, we do not consider that the issues raised in respect of other witnesses who gave evidence at the trial were of similar significance, and the issues raised in respect of witnesses who did not give evidence at the trial were less important still. However, because the CCRC report devotes a good deal of attention to both these categories of witness, and because they featured to an extent in Ms Blackwell's skeleton argument, we deal below with what we consider to be the relevant points raised in respect of other witnesses.

Witnesses who gave evidence at trial

148. A large number of witnesses gave evidence at the original trial. We have focussed on the witnesses who gave evidence that corroborated parts of the central account of D.

The location of the grave

149. There was no dispute as to the location. KP's grave was some 20 inches below the surface, very close to the back door of Charlton's flat and overlooked by his kitchen window. In the first appeal, it was suggested that this was not something which was capable of corroborating D's evidence. This court rejected that argument. The CCRC acknowledge that this was capable of amounting to corroborative evidence and was "untainted" by any of the other points raised in their report. We have seen photographs of the back garden. It was agreed that it was insecure, in that access to the garden could have been effected by anyone from the rear lane, given that there were broken walls and insecure gates along both sides. The trial judge dealt with this at page 8 of the second day of his summing up (Tuesday 26 February 1991) in these terms:

> "Mr Price, the owner of number 27 and number 29 agreed there was a risk of this being dumped in the garden by people who did not live in number 27 or number 29. Whether that risk extended to an unnoticed stranger digging a grave which must have been 3 feet or so deep, close to the rear door of the basement flat and within the view of anyone in that flat who happened to look out through the half-glass door, is another matter and you must consider it."

150. It seems to us that not only is the location of the grave properly regarded as corroborative evidence but the point made by the trial judge is a powerful one. If a non-resident was burying a body in the garden of No. 27 or No. 29, it is highly improbable that they would choose to bury the body, not away from the house, but in that part of the garden closest to the rear of the house and just a few feet from the half-glazed back door.

The Carpet

151. The second element of corroborative evidence identified by the trial judge was the fact that the carpet round KP's body was identical to the carpet on the floor of Charlton's flat, and might have been an off-cut from the time when the carpet was laid. Witnesses stated that the carpet around the body was the same pattern as the carpet which had been laid in the basement flat in September 1980 and which remained in place until removed during the 1989 building works. An off cut had been stored in the house, possibly in the cupboard of the basement flat. Mrs Ball who had chosen the carpet remembered seeing off-cuts. Mr Pethers recalled a roll of carpet underneath the stairs tied with string but the judge warned the jury that he was hopelessly confused about dates. Mr Pitcock, the carpet fitter, relying on measurements provided to him, was of the view that there would have been a large piece left over of about the same size as the carpet around the body. Further, the body and the carpet bundle were tied with two different kinds of electric cable. Mr Robst shared the basement for a short time in 1981. He kept his tools in the cupboard and noticed two kinds of black cable one of which was similar to the cable round the body.

152. Again, it was suggested in the first appeal that this evidence was not corroborative of D's account but again that argument was rejected by this court in 1994. Moreover the CCRC themselves accept that this is corroborative of D's account and is untainted by the matters raised on this appeal.

153. There is no suggestion that any of their evidence on this issue was the result of police misconduct or oppression. We conclude that the fact that the body was wrapped in a piece of carpet that was identical to the carpet in Charlton's flat, and that the off-cut of that carpet had been seen by other visitors to the property in a cupboard close by, was again a powerful piece of corroborative evidence wholly unaffected by any other matters raised on this appeal.

Charlton's gardening activities over the site of the grave

154. The trial judge identified this as the third piece of corroborative evidence and when he summarised the evidence in respect of the cultivation of the strip of garden where, ultimately, the grave was found, he suggested to the jury that they might think that it was of some importance. There were three witnesses who gave evidence that supported D's account and which was, on any view, unhelpful to Charlton. Mr Wells noted that in July 1981, the area of the grave had been cleaned up: all the weeds had been taken up and it was generally dug around. Charlton had told him that he intended to clean the garden up and put plants in. Mr Pethers gave detailed evidence about the work in that part of the garden and in particular the conversation that he had had with Charlton, as they looked at the garden in which Charlton had said that he had planted vegetables. Mr Pethers also gave evidence about a rake with a new handle that he had seen in Charlton's flat. Ms Pesticcio noticed that the garden had been recently dug in that area in the autumn of 1981. She had mentioned this to Charlton and he said that anybody could dig in the communal garden and that he had a garden spade. These witnesses were all challenged in cross-examination. The trial judge's summary makes plain that, if the evidence was accepted, there was a clear connection between Charlton and the cultivation of the garden at the relevant time. Furthermore, the judge noted that, although the evidence of Mr Pethers was challenged extensively, Charlton did admit that he may well have bought a new handle for his rake at about that time.

155. Taking each of these witnesses in turn, in the parts of the CCRC report dealing with Mr Wells and Mr Pethers there is nothing to suggest that this evidence about the garden, and Charlton's connection to it, was in any way unreliable, questionable or improperly obtained. In relation to Ms Pesticcio, as with Mr Wells, there is some criticism in the report about her evidence relating to the connection between Charlton and KP, and we deal with that below. But again, no criticism is made in the CCRC report of her evidence about Charlton's connection to the garden. We note that her evidence about this, which was in her first statement, was taken by an officer who had no involvement in the Lynette White or Philip Saunders enquiries. It is fair to add that the trial judge said in his summing-up that the jury might not find Ms Pesticcio's evidence about Charlton and the garden 'particularly helpful.'

156. Accordingly, the evidence of these three witnesses, connecting Charlton with the work in the garden in 1981, is unaffected by any of the new information about the other police investigations. We agree with the trial judge that this was a third element of evidence which corroborated D's account.

Charlton's association with Idris Ali

157. The fourth element of corroborative evidence identified by the trial judge was the evidence relating to Charlton's association with Idris Ali. Four witnesses in particular were identified: Mr Pethers, Beverley Tabbener, Prince Mottram and Jane R. We deal with each of these in turn.

158. Mr Pethers gave evidence that he had visited Charlton about half a dozen times in the basement flat. His witness statement including his reference to the gardening activities noted above was made on 6 January 1990, some seven weeks before Charlton was arrested. On 26 February 1990 he made a statement in which he referred to being present when Charlton met a 'young skinny half-cast aged about 15' whom Charlton addressed as 'Idris'. By the time this statement was made Idris Ali had been arrested and charged with murder and his name was in the papers. All of these points were raised at the trial and were the subject of the trial judge's summing up.

159. It is not clear from paragraphs 329-335 of the CCRC report if it is suggested that there is any potential doubt about the reliability of Mr Pethers' evidence beyond that which was known (and was the subject of cross-examination) at the trial. On the specific point as to Mr Pethers' evidence about the connection between Charlton and Idris Ali, the statement in which that connection was first made by Mr Pethers was taken by DC Meirion James on 26 February 1990. That officer was neither a Category A nor Category B officer and the report does not suggest that there was any misconduct in the taking of that statement. Accordingly, beyond the points as to the reliability of Mr Pethers' evidence generally, which were all fairly summed up by the judge, we are confident that there is nothing new relating to the reliability, or otherwise, of Mr Pethers' evidence.

160. Beverley Tabbener gave one witness statement, dated 9 March 1990, to DC Anthony Evans (who was again neither a Category A nor Category B officer). She gave evidence at trial in accordance with that witness statement to the effect that, when she worked as a waitress at the Xcel Restaurant, Charlton was one of the doormen, and that he and Idris Ali would talk on the door. She was cross-examined, although, critically, as the judge pointed out in his summing up at page 32, "it was not suggested that she did not know Charlton". In addition, she said that she had known Idris Ali for years "and that was not challenged". On that basis, it might be thought that she gave unchallenged evidence that these two men, both of whom she knew, also knew each other.

161. The evidence of Beverley Tabbener is dealt with very shortly in the CCRC report. They refer to the notes of her oral evidence in the CPS file which indicated that "Charlton would speak to everyone". The notes also said this:

> "Charlton talking to Ali – now and again. I didn't count the number of occasions.
>
> Invariably doormen speak to people wanting to come in.
>
> All I can say is talking friendly, not arguing.
>
> Ali not have to identify himself to a doorman to come in.

I don't know what was said.

Saw talking at door an Idris come in.

Idris spoke inside to doormen and prostitutes.

Can't say he knew him any better than any other customer."

162. In our view, those notes of her oral evidence were all entirely compatible with her statement and strongly support the link between Charlton and Idris Ali. So we noted with some surprise that, having set out those notes, the CCRC went on to say that "it may be the case that at trial Beverley Tabbener attempted to distance herself from her witness statement." We do not understand that statement. It manifestly does not follow from her oral evidence. Charlton may well not have known Idris Ali better than any other customer. That is not the point. The point is that the two men knew each other and that was the whole purpose of Beverley Tabbener's evidence.

163. Accordingly, we conclude that, not only is there nothing in the CCRC report to cast doubt on the veracity of Beverley Tabbener's evidence, the further researches by the CCRC have only served to confirm the significance of that evidence.

164. In relation to the evidence of Prince Mottram, the judge, as he had done when reminding the jury of Mr Pethers' evidence, warned the jury that his evidence as to dates may well be incorrect. Mottram had known Idris Ali for years and saw him at the clubs where Charlton worked. He said he saw the two men talking to each other near Astey's once or twice.

165. The CCRC deals with Mottram's statements very briefly. Although it is difficult to discern what precisely the criticisms are (if any) of his statements, we have considered the circumstances in which they were taken. His first statement, dated 26 February 1990, was taken by DC Thomas Mitchell who is a Category A officer. This was the first link provided between Idris Ali and Charlton and it may be the CCRC considered this suspicious. His second statement, which confirmed his positive identification of Charlton at an identification parade held on 5 March 1990, is not itself the subject of express criticism but we note that he was taken to the parade by two officers, one of whom is DC Toobey (Category B). However, there were in fact two officers called DC Toobey in the Lynette White investigation and the CCRC is not able always to distinguish between the two.

166. To the extent that we have correctly identified the possible concerns about the evidence of Mottram, over and above those that were dealt with in the summing up, we reject them. We have already set out our view that it is not enough simply to say that a statement was taken from an officer who had an involvement in one of the other tainted investigations. There was no evidence to suggest that DC Mitchell put improper pressure on Mottram when taking his statement; nor is this a case in which Mottram could be said to have changed his account when identifying the connection between Charlton and Ali, given that the statement of 26 February 1990 was his first. As to the identification parade, there is no suggestion that this was anything other than an honest and correct identification of Charlton.

167. Jane R's evidence that she knew both men and had seen them together and her failure to mention either of their names until after the identification parade (where she did not pick out Charlton) and after their names had been in the paper were all properly the subject of the judge's summing up. He advised the jury to treat her evidence with care. The CCRC report devotes eleven paragraphs (351-361) to the dealings between Jane R and the police. Again, although she was dealt with by a number of Category A or Category B officers, there is no specific evidence of oppression or improper conduct. The highest that it is put by the CCRC is at paragraph 360 of their report when they say that:

> "…the manner in which her witness statements developed over the course of time and the way in which they became increasingly accusatory towards Alan Charlton and Idris Ali is of some concern. It is possible to speculate that this witness may have been suggestible or receptive to encouragement from officers to assist."

168. Speculation that a witness may be suggestible is not a proper ground of appeal. The development of her evidence was a matter that was known at the time of the trial and was properly put to her in cross-examination. There is no sufficient evidence which would cause this court to doubt the veracity of her evidence, beyond that which was known at the trial.

Charlton's association with Karen Price

169. The trial judge identified this as the fifth element of corroboration. There were five witnesses: Arthur Wells, David Harries, David Stitfall, David Rigby and Ms Pesticcio. Their evidence was summarised on the first day of the summing up. Again, it is convenient to deal with each in turn.

170. Mr Wells was cross-examined about his evidence of seeing Charlton outside No. 29 talking to a girl who was or looked like KP on the basis this incident simply did not happen. This is dealt with in the CCRC report between paragraphs 336-340. The criticism appears to be that, although in his second statement, he said, by reference to the photograph of KP wearing the trilby hat, she was "not unlike" the girl that he had seen talking to Charlton, and gave a description of that girl, he made a third statement some two months later in which he gave more detailed evidence about the incident. He expressly mentioned for the first time that the girl on the wall was wearing a trilby hat, because he had jokingly said to her that he would buy the hat from her because it went with his suit.

171. The CCRC report records that this third statement was 'concerning' because Mr Wells was able to supply additional detail regarding the encounter in the street which he had not mentioned before. They note that there was no explanation as to why Mr Wells was able to recall such additional detail which suggested, to a much greater degree, that the girl in the street had been KP.

172. The difficulty for the appellant is that, as the CCRC recognise, all of this was known at the trial and deployed at the trial. It was expressly suggested to Mr Wells that he was lying about seeing KP sitting on the wall, a suggestion that he denied. There would only be some additional point about Mr Wells' third statement if there was a suggestion of oppression or coaching in the making of that statement; but there is not.

His statement was given to PC Ashby, who was neither a Category A nor Category B officer. Although the statement indicated that Mr Wells (at some point) also saw acting DS Steven, who is a Category A officer, there is nothing to indicate that he played any part in the taking of the statement.

173. Accordingly, it seems to us that the credibility as to Mr Wells' evidence was in issue at the trial. The judge expressly cautioned the jury to take account of the brevity of the encounter which Mr Wells said he had with the two girls and the lapse of time before he was asked to identify them. Whether his evidence was to be believed was therefore a matter for the jury. There is nothing new in any of the material that we have seen to suggest that there were any other factors relating to his credibility which was not before them.

174. David Harries was cross-examined to the effect that he was mistaken about seeing KP and Charlton at a blue film showing at No 29. As the judge said in his summing up, the crucial question for the jury was whether they could rely on Harries' identification of Karen Price, bearing in mind the comparatively short period of time that she would have been clearly visible to him, the many years which had elapsed, and the fact that he had no recollection of her when first seen by the police.

175. It is this last point which features in the relevant parts of the CCRC report at paragraphs 316-324. The criticisms seem to be that there was an inappropriately high level of contact with this witness, and that he had been under the influence of alcohol on two occasions on 8 and 9 February 1990. It is difficult to see where either of these criticisms go. Mr Harries gave three statements, dated 29 December, 31 January and 13 July. There was other contact with the police, such as on 8 and 9 February, but no statement was taken then, presumably because of Mr Harries' drunkenness. Although the officers to which his statements were given were either Category A or Category B officers, there is nothing to indicate improper conduct in the taking of those statements.

176. Furthermore, it is important to note that, in his statement dealing with the incident with Charlton and KP sitting on the wall, Mr Wells indicated that Mr Harries was also present. Mr Harries' second witness statement expressly said that he could not remember that. He did not alter that view. This indicates to us that Mr Harries' evidence was not being manipulated in the way suggested on behalf of Charlton.

177. Mr Stitfall's evidence, as summarised by the judge, did not really add to the link between Charlton and KP because, as Mr Stitfall made plain at the outset, he never saw KP. His evidence was solely about Charlton borrowing the key to his bedsit (Room No.2 on the ground floor of 29 Fitzhamon Embankment. Accordingly, although his evidence is dealt with in the CCRC report at paragraphs 325-328, we consider that, on any view, his evidence was peripheral at best. We note that he was not seen by any Category A officers.

178. Mr Rigby knew Charlton and went to No 29 on three occasions. On his second visit, he watched a blue movie upstairs where there were three girls. He identified the third girl as KP. The judge warned the jury that they had to be very wary of relying on his identification of KP "because in cross-examination he told you that he had first identified her to the police from two photographs of her which were shown by the police to him. That was a wholly unsatisfactory way for the police to proceed,

because the danger is that the witness's memory will be tarnished and contaminated by being shown only one photograph rather than having a choice from several, and if recollection is tarnished and contaminated in that way, his evidence may be wholly unreliable."

179. Given that warning, it may be thought that there was little further that could be said to damage the reliability of Mr Rigby's identification evidence. Paragraphs 311-315 of the CCRC report deal with that evidence and they take the point that, although Mr Rigby attended the police station on 26 February 1990, he did not identify KP at that stage. They say that the fact that he only did so three months later was "curious".

180. The problem with this part of the CCRC report is that it presupposes that, on his visit to the police station on 26 February, when Mr Rigby identified Mr Stitfall, he was also asked to identify the girls who were present at the blue movie party. There is simply nothing which supports such a proposition: it is pure speculation. If he was not asked on that occasion to identify KP, then the only further point raised by the CCRC falls away entirely.

181. In our view, legitimate concerns about the reliability of Mr Rigby's evidence were raised by the trial judge in his summing up. Nothing new has been identified which, had it been known at the time of the trial, would have been relevant to Mr Rigby's credibility.

182. Finally, on the topic of the link between Charlton and KP, there was the evidence of Ms Pesticcio, to whom we have already referred above. This was important evidence because she had lived with Charlton for a period after KP had been killed. She was cross-examined about her stormy relationship with Charlton and it was suggested that she was lying about seeing a photograph of KP in Charlton's wallet out of bitterness, a suggestion which she rejected. Again the judge repeated the same warning to the jury that he had given in respect of Rigby about the possible contamination of the witness' memory because only one photograph was shown for identification purposes.

183. The CCRC report deals with Ms Pesticcio at paragraphs 341-345. There is no criticism whatsoever of the statements that she gave to the police, or the taking of those statements. Her first statement was dated 18 December 1989 before the body had been identified. She gave a detailed description of the photograph in Charlton's wallet. Her second statement, dated 8 March 1990, explained that she did not recognise the actress playing KP on the Crimewatch broadcast in February, but when she saw the photograph of KP in the South Wales Echo, she recognised her as the girl in the photograph in Charlton's wallet. That statement was given to DC Cullen, whose role in the Philip Saunders enquiry we have discussed above.

184. Accordingly, beyond those matters which the judge properly warned the jury about at the trial, there is nothing further in the CCRC report which suggests any additional concerns about Ms Pesticcio's evidence.

185. It seems to us, therefore, that there was corroborative evidence from five different witnesses which supported, in one way or another, D's evidence that Charlton knew KP.

The evidence of Ashong

186. Ashong contacted the police to tell them of the alleged cell confessions. In the judge's summing up he dealt with Ashong's answers in cross-examination and his denial that he had lied to help himself. The entirety of this part of the summing up was prefaced with the judge's warning that the jury had to approach Ashong's evidence with care because, amongst other things, he had a considerable record for dishonesty. In addition, the judge expressly pointed out that "it might be surprising that if Charlton had resolutely, as he had, denied any involvement to the police, he should suddenly confess a degree of involvement to a total stranger."

187. The relevant part of the CCRC report is at paragraphs 381-392. In our view, as to the detail of Charlton's confession to Ashong, this part of the report adds nothing. Paragraph 385 notes that it might be considered implausible that Charlton would give a detailed confession to a virtual stranger, which was precisely the point made by the trial judge to the jury.

188. Again, therefore, the best that could be said is that Ashong was dealt with by DS Rogers (Category A), DC Carnall (Category B) and that his statement was taken by DC Belt (Category B). There was no suggestion of any improper conduct in their dealings with Ashong (unlike the evidence that emerged in connection with the other investigations into the murders of Lynette White and Phillip Saunders). Thereafter, although there were further dealings between the police and Ashong, nothing untoward is said to arise from those dealings. There is a suggestion in the CCRC report that Ashong was doing this in order to benefit himself but that was a point expressly raised at the trial and dealt with by the judge in his summing up.

189. For these reasons, therefore, we are unable to see that there is anything new in relation to the evidence of Mr Ashong. More widely, whilst it was submitted that cell-block confessions had been used in the Philips/Saunders and Lynette White enquiries, and two other alleged cell confessions had been made to fellow prisoners by Charlton (not used) it is right to recall that there was a time when such confessions were routinely used in cases of this sort. Their reliability was always questionable. It was for that reason that the trial judge in this case gave the warning in the stark terms that he did.

190. Accordingly, we do not consider that there is any significant further information in relation to the Ashong confession that bears upon the safety of Charlton's conviction.

191. In our view, the trial judge was right to identify these separate strands of evidence that provided corroboration for D's central version of events. Some of that evidence was more reliable than others. Where there were question marks over the reliability or credibility of the relevant witnesses, those were expressly brought to the attention of the jury by the trial judge. In our view there is nothing further in the CCRC report which provides any material additional concerns as to the credibility of the relevant witnesses.

192. There are no other witnesses, in addition to D, Ali, and those witnesses identified above, who gave evidence at trial whose evidence was of any significance. In those circumstances, we do not consider it necessary to deal further with any other parts of the CCRC report, or the grounds of appeal, which relate to any other witnesses who gave evidence at trial. Their involvement was, at the highest, entirely peripheral.

Witnesses who did not give evidence at trial

193. It follows from the preceding section that, in respect of witnesses who did not give evidence at the trial, we consider their evidence, and the way in which it was gathered, to be of little direct relevance to the safety of Charlton's conviction. Ms Blackwell accepted that in her oral submissions, save that she continued to ascribe some significance to two such witnesses, Beverley Rees and Debbie Myles.

194. Beverley Rees provided a statement on 30 January 1990 relating to D going on the run from the centre and having a boyfriend called Alan. Her second statement, made the following day, told of D acting as a prostitute and confirmed that Charlton had been her boyfriend. She also said that D had beaten her up. Ms Blackwell suggested that it was in these statements of Beverley Rees that the close-minded investigation began, because they showed D had a link with Charlton and that she had acted as a prostitute.

195. However, on analysis, this criticism simply does not stand up. Plainly, by the time that Beverley Rees gave her statements, Charlton was a figure of interest to the police, given that he had lived in the relevant flat at the relevant time. There was no dispute that D had acted as a prostitute when on the run from the centre where she was supposed to be resident. D herself provided the evidence of her connection to Charlton, even confirming the occasion when Charlton had cut her leg. In addition, there were other aspects of Beverley Rees' account which D denied both when put to her in interview and when she was cross-examined.

196. In our view, there was nothing close-minded about the investigation and nothing improper about the statements obtained from Beverley Rees. Charlton was inevitably going to be under suspicion and Beverley Rees' statements were simply one link in the chain on that aspect of the inquiry.

197. It is convenient to deal here with the evidence of Elizabeth Williams. Although she did give oral evidence at the trial, it was of peripheral relevance, given what D herself admitted. The evidence of Elizabeth Williams did not go to any of the seven corroborative matters referred to above. However, it was said that, as with Beverley Rees, the statements of Elizabeth Williams dated 8 and 9 February 1990 served to put pressure on D because they dealt with D running away, practicing prostitution, and having a link to a man called Alan. However, as we have said, all of this evidence was subsequently confirmed by D in any event. It cannot have put undue pressure on D that other people were talking about her lifestyle in 1981 when those elements of that lifestyle were accurately recorded. In any event, this part of the case presupposes that improper pressure was put on D, which is a matter that we deal with above.

198. The CCRC report, with respect to them, seems to have ignored the alternative interpretation of the statements provided by Beverley Rees and Elizabeth Williams: namely that all they were doing was providing background material which was subsequently confirmed by the principal witness, D.

199. The evidence of Debbie Myles, and the criticisms made of it, are dealt with at paragraphs 154-163 of the CCRC report. Although the report suggests that the Debbie Myles' statements were used to apply pressure to Idris Ali, Ms Blackwell submitted that they were being used to apply pressure to D. In any event, it was said by both the CCRC and Ms Blackwell that her statements were potentially evidence of a close-minded investigation.

200. The statements of Debbie Myles contained similar accounts to the statements of Rees and Williams. The same points that we have already made apply again. However, Debbie also gave evidence of then man she called Adrian. In our view the submission that, in some way, Idris Ali's later adoption of himself in the role of Adrian was a consequence of the inappropriate police investigation fails at every level. First, no criticism can be made of Debbie Myles' statements, or the truthfulness of her account. Indeed, on that point, we note that, at the appeal in 1994, Charlton called evidence from Debbie Myles in support of his appeal and the court accepted that evidence, but regarded it as completely irrelevant to the issues in the case.

201. Secondly, we do not think that it is fair to say that Idris Ali cast himself in the role of Adrian. There were some similarities, but some differences between Ali's description of what had happened, compared to that of Debbie Myles. Thirdly, to the extent that Ali did adopt the role of Adrian, then that may result from his intellectual impairment and personality traits but that is precisely why this court quashed his conviction for murder in 1994.

202. Ms Blackwell also suggested that the evidence of Debbie Myles was important because it fed into the report of DI Mouncher of 19 February 1990, which focused on the possibility that KP and D were together at the relevant time, working as prostitutes, while frequenting the Excel Bar. In that regard, they had the opportunity to meet Charlton. She said that this report indicated the close-minded nature of the investigation.

203. We disagree. By the time he wrote his report on 19 February 1990, DI Mouncher had a good deal of evidence to show that KP and D could well have been together in Cardiff at the relevant time. There was also plenty of evidence to show that both girls worked as prostitutes and frequented the Xcel Bar where Charlton worked. This was therefore an important element of the investigation.

204. What her submissions ignore is the fact that the report indicates other suspects who also represented leads. The fact that D was a central witness, being the first person who might have a direct link to KP one way, and Alan Charlton the other, was simply as a result of the statements taken thus far. Whatever else might be said about DI Mouncher, it cannot be said that his report of 19 February 1990 represented a close-minded investigation. We wish to emphasise we have not set out all the matters the CCRC suggested are indicative of a closed mind but we have considered them all with care. As it seems to us they indicate an attempt to pursue all proper lines of inquiry. We do not consider that any of the other points have any bearing whatsoever on the safety of Alan Charlton's conviction. We therefore decline to address them further in this judgment.

205. It follows that we see no substance in the other two remaining grounds. Ground x (that Ali's evidence should have been excluded from the trial) was abandoned in the course of oral submissions. We are surprised it ever made its way into the grounds of appeal, even if advanced by the CCRC. It was totally misconceived. As Ms Blackwell for Charlton properly conceded, there is absolutely no basis in law for arguing that the judge had the power to prevent Ali from giving evidence in his own defence because it was prejudicial to his co-accused. It is a common feature of "cut throat" trials that evidence of one accused may be detrimental to another. There is no basis for ordering

separate trials or using section 78 of PACE in the way suggested by the CCRC. The trial process is well equipped to deal with such situations fairly to both, as it did here.

206. Ground xi (the proceedings should have been stayed as an abuse of process) was pursued with little enthusiasm, probably because in our view this too was misconceived. Both Ms Blackwell and Mr Hughes recognised that a court will only stay proceedings on the grounds of abuse of process in exceptional circumstances. They both struggled to establish that the misconduct alleged in the KP investigation (even if established to our satisfaction) amounted to the kind of exceptional conduct that justified a stay. Again the trial process is well equipped to deal with a situation such as this.

Conclusions
Ali's appeal

207. We turn to Ali's appeal. Had we decided that the reliability of D's evidence has been significantly undermined by the new material so that Charlton's conviction is unsafe, there would have remained two additional hurdles for Ali. D's evidence far from being central to the case against Ali was helpful to him and did not require undermining as far as he was concerned and, most importantly, he pleaded guilty. The CCRC Statement of Reasons and Mr Hughes' submissions somewhat gloss over these facts.

208. It is true that a plea of guilty does not deprive us of jurisdiction to examine the safety of Ali's conviction of manslaughter. As with any other appeal against conviction, our task is to decide whether the conviction is safe. Undoubtedly, there are cases where this Court has quashed a conviction as unsafe notwithstanding an unequivocal plea of guilty and we have considered the examples cited to us. However, there are significant distinctions to be drawn on the facts of this case. There is here no evidence someone else committed the crime and nothing of any substance to suggest the second appellant's confession was untrue. We agree with Mr Whittam that 'the authorities relied on are a far cry from the circumstances of this case.'

209. Furthermore, the facts that the appellant was fit to plead and pleaded guilty unequivocally are highly relevant to the Court's task: see *R v Lee (1984) 79 Cr. App.R. 108 CA*. It has not been suggested that Ali was unfit to plead and Mr Hughes on Ali's behalf expressly disavowed any argument that his plea had been equivocal. This is not a case where the Appellant pleaded guilty after an adverse ruling on a point of law by the trial judge; nor is it a case where the Appellant claims to have been misled as to an available defence by his trial counsel.

210. Ali's claim to the CCRC is simply that he was bullied into admitting something he had not done and pleaded guilty to gain immediate release from custody. Since he has not waived privilege, we cannot know how much of what he has said to them, if anything, was in his original proof or any other proof before Mr John Charles Rees. There seems to have been no challenge to the admissibility of his confessions to the police under s.76 of PACE at trial, which would be surprising if he had told his trial counsel of his mistreatment in the cells. The account he gave in evidence of his dealings with KP and the last time he saw her, would also seem to be quite different from what he told the Commission.

211. We have done what we can to assess what he now says, and to do so in the light of Dr Gudjonsson's opinion, but we note all the medical evidence upon which reliance is now placed was available to very experienced counsel at the time of plea. There is nothing new in it. In any event it does not come close to providing a basis for arguing he did not know what he was doing or might have been induced improperly to plead guilty. As for the assertion he pleaded guilty to something he did not do, so as to be released as soon as possible, we are entirely confident he would have been advised in full and fair terms by Mr Rees and we note that Ali himself provided the instructions for his basis of plea.

212. The law is clear: only in exceptional circumstances will the court entertain an appeal against a conviction based on an unequivocal plea of guilty. There is nothing exceptional here. Whatever may have led to Ali's admissions while in police custody, according to Mr Rees, Ali was put under no pressure by anyone prior to entering his plea, which he did of his own free will. He was street wise and experienced in the criminal justice process. He was fit to plead, knew what he was doing, intended to plead guilty to manslaughter and did so without equivocation having received proper advice from counsel and solicitors. That advice would not have been significantly affected by the new material. He was offered no inducement and placed under no pressure by anyone. Mr Rees went through the basis of plea with him line by line. His plea confirmed the evidence of D and what he said to others in an unpressurised situation. He made no attempt to appeal his conviction until the CCRC contacted him and with nothing to lose and possibly with a lot to gain he accepted their invitation to examine the circumstances of his case.

213. In those circumstances the only way in which an appeal could succeed is if we were to find that the prosecution offended the court's sense of justice and propriety to the extent that it amounted to an abuse of process. As we have indicated, we do not. The police misconduct in this case proven or alleged was not such as to offend our sense of justice or amount to an abuse of process.

214. For those reasons, whilst sharing the concerns of the CCRC about the conduct of some officers in the South Wales police force in the late 1980s early 1990s, we dismiss both appeals against conviction.