Neutral Citation Number: [2011] EWCA Crim 1255

Case No: 2010/05694/B5

IN THE HIGH COURT OF JUSTICE
COURT OF APPEAL (CRIMINAL DIVISION)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18/05/2011

Before :

THE LORD CHIEF JUSTICE OF ENGLAND AND WALES
MRS JUSTICE RAFFERTY
and
MR JUSTICE HOLROYDE

- -

Between :

R
- v -
Dobson

- -
- -

Mr Mark Ellison QC and Miss A Morgan for the Applicant
Mr Timothy Roberts QC and Mr S Moses for the Respondent

Hearing dates : 11th – 12th April 2011

- -

Approved Judgment

The Lord Chief Justice of England and Wales:

Introduction

1. On 22nd April 1993, just after 10.35 in the evening, a young man, Stephen Lawrence, then 18 years old, was waiting at a bus stop at Eltham with a close friend of the same age, Duwayne Brooks. As they waited peacefully for the bus, a group of white youths crossed the road towards them. One of the youths used abusive racist language. This was followed by a sudden and immediate attack, as the group converged on or charged at them. Duwayne Brooks managed to make his escape, but Stephen Lawrence was felled. He was stabbed twice to the upper torso: one wound tracked vertically downwards from 10cm to the right of the mid line, and the second tracked more or less horizontally, but in an upward direction, from the outer aspect of the left shoulder. Major blood vessels were severed. The injuries were fatal. The position and angle of the wounds suggested that Stephen Lawrence was likely to have been upright when the wound to the right side was inflicted, but may have been lying on the ground when stabbed on the left shoulder. Apart from the stabbing wounds, the only further injuries noted at post mortem were an incised injury to the left side of the chin and abrasions to the cheek and the back of the right hand. Mortally wounded, Stephen Lawrence managed to get to his feet. He ran after Duwayne Brooks, but after a little while, he collapsed on the pavement. He died shortly afterwards in hospital.

2. The murder of Stephen Lawrence, a young black man of great promise, targeted and killed by a group of white youths just because of the colour of his skin, scarred the conscience of the nation. This was indeed a calamitous crime, and to date no one has been convicted of involvement in it.

3. Stephen Lawrence's parents began a private prosecution and, in April 1996, Gary Dobson, Luke Knight and Neil Acourt were tried for murder at the Central Criminal Court before Curtis J and a jury. Following the judge's ruling that purported identification evidence was not admissible, there was insufficient further evidence to justify the continuation of the prosecution. The jury was directed to acquit the defendants. Not guilty verdicts were entered .

4. This is an application by the prosecution for the acquittal of Gary Dobson to be quashed and for a re-trial to be ordered under section 76 of the Criminal Justice Act 2003. No application to quash the acquittals of Neil Acourt and Luke Knight is before the court, but another suspect, who was not a defendant at the earlier trial, David Norris, was arrested in September 2010 and charged with murder. His trial will take place at the Central Criminal Court in November 2011. If the acquittal of Gary Dobson is quashed and a re-trial ordered, the prosecution propose that he and David Norris will be tried together.

The Background

5. Within a few hours of the attack on Stephen Lawrence, the police received anonymous telephone calls and letters which suggested that members of a group of white youths were responsible. Five suspects - Neil Acourt, Jamie Acourt, Luke Knight, David Norris, and Gary Dobson – were identified. Dobson (as we shall, for convenience, hereafter refer to him) was then 17 years old. He was living with his parents at 13 Phineas Pett Road in Eltham, very close to the scene of the murder. For

present purposes the physical description of the suspects is irrelevant. Arrests were postponed until a number of inquiries had been pursued in an endeavour to gather what the police regarded as real or hard evidence against the suspects. This decision was later the subject of considerable criticism.

6. During house-to-house inquiries on 25th April, Dobson told the police that from about 5.30pm he had been at home throughout the evening of 22nd April. On the basis of his own later admission that was untrue.

7. With the police under pressure to make progress, in May and June 1993, at various times, five suspects were arrested. When Dobson was arrested a number of items of clothing were seized from his home. These included a distinctive grey, sometimes called grey/yellow, bomber jacket which was recovered from his bedroom, (LH/5) and a multi coloured Marks and Spencer cardigan found in the wardrobe in his parents' bedroom. (ASR/2) Although the delayed arrest impacted on the strategies adopted by the scientists when they received these two items of clothing in October 1993, scientific evidence relating to them is now the critical feature in the present application. It will be addressed in detail later in this judgment.

8. Following his arrest, Dobson was interviewed under caution. He told the police that on 22nd April he had left his house at about 11.45pm after his parents had gone to bed to go round to the home of Neil and Jamie Acourt to pick up a Bob Marley CD. While he was there another young man, Mattie White, arrived, and told them all that a boy had been murdered. When he was asked why he had not told the police on 25th April that he had been out that night to the home of the Acourts, he responded that he "didn't find it necessary…", adding "I know I should have now". In interview he denied knowing David Norris. He accounted for the grey "bomber jacket", saying it had been given to him some years before, but that it was "miles" too big for him and that neither he, nor anyone else, had worn it for ages. That assertion, too, is now called into question by the scientific evidence. But at that stage of the inquiry, there was insufficient evidence to justify charging Dobson with any offence.

9. Following their arrests, Knight and Neil Acourt were charged with the murder of Stephen Lawrence, after each of them was identified on identification parades by Duwayne Brooks as part of the attacking group of white youths. However the reliability of these identifications was called into serious question. On any view Brooks had found himself in a frightening situation, with only a brief opportunity for making a correct identification at night, under artificial light, in a desperately fast-moving incident. Moreover, after he had identified Knight, he himself confirmed to an independent police officer that he had not actually seen the faces of any of the attacking group, but had been given a description of them before he took part in the parades. Accordingly, the prosecution of Knight and Neil Acourt was discontinued. As to Dobson, he was never identified by anyone.

10. Thereafter, notwithstanding the continuing police investigation, the Crown Prosecution Service concluded that there was insufficient reliable evidence to justify any prosecutions arising out of the attack on Stephen Lawrence.

11. A second police investigation began in May/June 1994. This investigation, in effect, followed up the information (and it was never any more than that) which suggested that the five original suspects were responsible. During the course of this

investigation covert surveillance was carried out at the flat then occupied by Dobson. Video and audio footage demonstrated that apart from Jamie Acourt, who was on remand in custody throughout this period of surveillance, the remaining four suspects were present together on a number of occasions at the flat then occupied by Dobson. All four may have known that they were subject to surveillance, but they were recorded from time to time making racist comments, brandishing knives, and apparently going out into the street carrying knives. Some language used in these conversations was alarmingly and aggressively racist, and some extremely violent gestures were also recorded. Although different things were said by different members of the group, it seems apparent that all were party to this kind of language and behaviour. On the other hand nothing said by any one of them, as recorded on the audio and video probes, involved an express or implied admission of involvement or participation in the attack on Stephen Lawrence. In any event, before the enactment of the 2003 Act, this material would probably not have been admissible in evidence: nowadays there is a respectable argument that it should be admitted. That would be a decision for the trial judge in the light of the issues arising in any trial.

12. At the conclusion of the second investigation, the view of the Crown Prosecution Service was that no sufficient admissible evidence was available to justify prosecution. This was a balanced objective assessment of the forensic realities: the prospects of a successful prosecution were negligible.

13. Accordingly, perhaps in despair at the inadequacies of the investigative process and the fact that no one had been brought to justice for the murder of their son, members of the Lawrence family decided to start a private prosecution. In April 1995 Neil Acourt, Knight and Norris were arrested, Jamie Acourt was arrested two days later and Dobson was eventually arrested in late August.

14. Just before Dobson's arrest committal proceedings against Neil Acourt, Jamie Acourt, Knight and Norris began. At the end of the committal the prosecution did not seek the committal of Jamie Acourt for trial, and the committing Magistrate discharged Norris. Neil Acourt and Knight were committed for trial at the Central Criminal Court on 11th September 1995. Following separate committal proceedings against Dobson, in December 1995, he too was committed for trial.

15. The trial of Neil Acourt, Knight and Dobson began on 16 April 1996. The evidence of Brooks was crucial to the success of the prosecution, but as we have indicated, it was flawed. The question whether his evidence should be placed before the jury was examined in detail at a voir dire. Brooks gave evidence on three days. After hearing argument, Curtis J concluded that his evidence of identification of any of those involved in the attack on Stephen Lawrence was inadmissible. The judgment was impeccable, the reasoning clear, and the conclusion unavoidable.

16. In very brief summary, there was no true recognition of any assailants at the time of the offence, and although the judge was sympathetic to Brooks, who when all was said and done had been an intended victim of the attackers, he had over the investigations identified three or four different individuals as the main person who attacked Stephen Lawrence. In reality he did not know whether he was "on his head or his heels". The identifications made by Brooks were open to serious question on the ground that there was no true recognition at the time when the purported identifications took place, and that the identifications thereafter were tainted by the

knowledge and information gleaned in gossip and discussion in the locality in the weeks after the murder. To admit this evidence of identification would amount to an injustice, and the injustice suffered by the Lawrence family could not be cured by adding another to the one they were already suffering. The entire judgment of Curtis J is attached to this judgment as Appendix A.

17. On 25th April 1996, the prosecution having considered its position, indicated that without the identification evidence made by Brooks the remaining evidence did not provide a sufficiently reliable basis to enable the jury to infer the guilt of any of the three defendants. That conclusion, too, was inevitable. No further evidence was offered against them. On Curtis J's direction, the jury entered "not guilty" verdicts. The verdict in relation to Dobson is the subject of the present application.

The statutory criteria

18. Until Part 10 of the Criminal Justice Act 2003 (the 2003 Act) came into force the ancient rule against double jeopardy represented an insuperable barrier to a second prosecution of any of those acquitted at the Central Criminal Court in April 1996. The rule has been subject to limited statutory abrogation in relation to a number of qualifying offences, of which murder is one.

19. Section 78 of the 2003 Act provides:

> "(1) The requirements of this section are met if there is new and compelling evidence against the acquitted person…
>
> (2) Evidence is new if it was not adduced in the proceedings in which the person was acquitted…
>
> (3) Evidence is compelling if –
>
> (a) it is reliable,
>
> (b) it is substantial, and
>
> (c) in the context of the outstanding issues, it appears highly probative of the case against the acquitted person.
>
> (4) The outstanding issues are the issues in dispute in the proceedings in which the person was acquitted…"

20. Thus "compelling evidence" for the purposes of section 78 is defined in the section itself. It does not mean that the evidence must be irresistible, or that absolute proof of guilt is required. In other words, the court should not and is certainly not required to usurp the function of the jury, or, if a new trial is ordered, to indicate to the jury what the verdict should be. Our attention has been drawn to the observations of the Vice President, Lord Justice Hughes, in *R v (G), B (S)* [2009] EWCA Crim 1207 where the proposed new evidence, of a co-accused who had been convicted at the original trial, did not satisfy the test of reliability. At para 5 of the abbreviated judgment, the Vice President observed that it is "only where there is compelling new evidence of guilt, of the kind which cannot realistically be disputed, that the exceptional step of quashing an acquittal will be justified". The purpose of this observation, as para 9 makes clear,

was to highlight that the quashing of an acquittal is an exceptional step, which indeed it is, and can only be ordered if the statutory requirement in relation to the "reliability" of the new evidence is clearly established.

21. However the legislative structure does not suggest that availability of a realistic defence argument which may serve to undermine the reliability or probative value of the new evidence must, of itself, preclude an order quashing the acquittal. It must, of course, be carefully analysed, and given its proper weight. If the argument, or indeed any defence evidence, leads the court to conclude that the new evidence is not, after all, as reliable or substantial as it was thought to be, or that it no longer appears to be highly probative of guilt, then the court cannot be satisfied that the statutory test has been met. That is a fact specific decision. In the end, there are three defined elements: provided the new evidence is reliable, substantial, and appears to be highly probative, for the purposes of section 78 it is compelling: otherwise it is not.

22. Section 79 of the 2003 Act addresses the separate question which arises once the court is satisfied that new and compelling evidence as defined by section 78 is available. It provides:

> "(1) The requirements of this section are met if in all the circumstances it is in the interests of justice for the court to make the order…
>
> (2) That question is to be determined having regard in particular to –
>
> (a) whether existing circumstance make a fair trial unlikely;
>
> (b) for the purposes of that question and otherwise, the length of time since the qualifying offence was allegedly committed;
>
> (c) whether it is likely that the new evidence would have been adduced in the earlier proceedings against the acquitted person but for a failure by an officer or by a prosecutor to act with due diligence or expedition.
>
> (d) whether, since those proceedings or, if later, since the commencement of this Part, any officer or prosecutor has failed to act with due diligence or expedition.
>
> (3) …
>
> (4) Where the earlier prosecution was conducted by a person other than a prosecutor, sub-section (2)(c) applies in relation to that person as well as in relation to a prosecutor."

23. The interests of justice test requires attention to be focussed on the express statutory criteria provided in section 79, but these criteria, although wide ranging, are not exhaustive. They are partly directed to events during the original investigative and trial process, a requirement designed to avoid delay in the administration of justice as well as inefficiency and lack of direction which might result from a perception that

what we shall describe as a second bite of the cherry may eventually become available to the prosecution. Thus if the new evidence relied on by the prosecution would have been revealed for use at the first trial by a competent investigative and/or prosecutorial process, then the interests of justice may, on this ground alone, lead to the application being refused. The interests of justice have also to be addressed in the context of the date when any new trial may take place, with particular emphasis on any failure of due diligence or expedition since the original trial and on the impact of any delay (whether culpable or not) on the fairness of the proposed second trial. However compelling the new evidence may be, it is elementary that any second trial should be a fair one. For this purpose the court will examine all the known facts, and consider any material drawn to its attention on behalf of the potential defendant, including any potentially prejudicial publicity attracted by the case, which may make it "unlikely" that a fair trial can take place.

24. If this court is satisfied that the requirements of both sections 78 and 79 are met, the order must be made: otherwise the application must be dismissed (see s77). In the context of the present application it should perhaps be highlighted that the legislative provisions which abrogated the double jeopardy principle make no distinction between an acquittal following a prosecution by the Crown in the usual way, or an acquittal following a private prosecution. This approach to the legislation is reinforced by the continuing power of the Director of Public Prosecutions under section 6(2) of the Prosecution of Offences Act 1985 to take over the conduct of a prosecution begun by a private individual, and thereafter to serve notice of discontinuance, or alternatively, to ensure its more efficient conduct. Accordingly in the present application we cannot apply any less stringent test to the legislative requirements merely because there was no realistic prospect that the private prosecution would succeed.

The issue under section 78 in this application

25. The present application depends on the reliability of new scientific evidence which by reference to the grey bomber jacket (LH/5) and the multi-coloured cardigan (ASR/2) closely links Dobson with the fatal attack on Stephen Lawrence. It does not and could not demonstrate that Dobson wielded the knife which caused the fatal wound, but given the circumstances of the attack on Stephen Lawrence, that is, a group of youths in a violent enterprise converging on a young man, and attacking him as a group, it would be open to a jury to conclude that any one of those who participated in the attack was party to the killing and guilty of murder, or alternatively manslaughter (a verdict which would, if there had been sufficient evidence, also have been available at the first trial). If reliable, the new scientific evidence would place Dobson in very close proximity indeed to Stephen Lawrence at the moment of and in the immediate aftermath of the attack, proximity, moreover, for which no innocent explanation can be discerned.

26. On behalf of Dobson, Mr Timothy Roberts QC, in a meticulously careful submission submits that this evidence is unreliable and of no sufficient probative value, simply because the results of the new examination of Dobson's clothing are likely to be the product of contamination over the years, that is, by contact with Stephen Lawrence's blood and his clothing. On this basis, even if the scientific evidence is reliable in itself, the apparent links with Stephen Lawrence are unconnected with Dobson's presence and involvement at the scene, but rather are the result of outdated or

incompetent storage or packaging or transporting arrangements, and therefore they are not probative at all, and certainly not highly probative.

Evidence relating to clothing at the first trial

27. At the time of the fatal attack, Stephen Lawrence was wearing the following layers of clothing on his upper body:

(a) A "Raiders" jacket (SP/3)

(b) A body warmer (SP/4);

(c) A blue cardigan (SP/2);

(d) A red polo short (SP/5); and

(e) A vest (SP6)

28. After his arrival at hospital, his bloodstained upper clothing was cut from him, the cut being made through all the layers of clothing simultaneously, along the full length of one arm and across the body, and passing over the site of one of the bleeding stab wounds. These clothes were bundled together and placed in a plastic hospital sack (SP/1). His lower garments were also removed, and placed in another hospital sack (SP/7). In due course they were seized as part of the investigative process.

29. As we have explained, a number of items of clothing were also seized from the home of Dobson during the course of the search at the time of his first arrest on 7th May 1993. These were the grey bomber-type jacket with black cuffs and waistline, and bright yellow trim to the pockets and collar, found in a bedroom occupied by Dobson at his home address (LH/5) and an extra large multi-coloured "St Michael" wool cardigan with horizontal patterns found within a wardrobe in his parents' bedroom (ASR/2).

30. In the early stages of the investigation, scientific testing was carried out initially by the Metropolitan Police Forensic Science Laboratory and then by the Forensic Science Service. For present purposes nothing turns on the distinction between the two, and for convenience we shall therefore refer to the "FSS" throughout. When the clothing of Stephen Lawrence and the suspects was scientifically examined for the first time by FSS, the view was taken that it was not a worthwhile exercise to search the clothing of the suspects for fibre transfer from Stephen Lawrence's clothing. Principally that was because of the delay of two weeks between the time of the stabbing and the arrests and seizing of clothing from the suspects. A further reason was that in any event any contact between Stephen Lawrence and his attackers could only have been brief. There was therefore thought to be only a very slim chance that any fibres from his clothing would be found on the clothing of the suspects even if they were involved in the attack. However a search was made for fibres which might have transferred the other way, that is from the clothing of the suspect to his clothing. This process produced only limited results, which can be summarised as follows.

31. Textile fibres were removed from the inside of the plastic bag into which Stephen Lawrence's right hand was placed (RC/4). They included two purple/brown wool fibres which were found to have the same microscopic, colour and dye characteristics

as constituent fibres found on the multicoloured cardigan (ASR/2) recovered from the bedroom of Dobson's parents. At the time this was thought to provide no more than "weak support" for the assertion that the two fibres had originated from that cardigan. In addition to the two brown fibres, a single white polyester fibre with the same microscopic characteristics as constituent fibres from the jacket (LH/5) seized from Dobson's bedroom was found in the right hand bag (RC/2). In addition a single grey cotton fibre with the same microscopic and dye characteristics as the constituent fibres of the jacket (LH/5) was recovered from within the plastic sack (SP/7) into which Stephen Lawrence's lower clothing had been placed at the hospital. The opinion expressed at the time was that this provided only "very weak" support for the assertion that the white polyester fibre and the grey cotton fibre may have originated from the jacket (LH/5).

32. The jacket (LH/5) was visually examined for blood, and the then usual KM screening test was carried out. The presence of blood was not detected.

33. In August 1995 an independent forensic scientist, Dr Gallop, was instructed by the solicitors conducting the private prosecution. She took the view that it was appropriate to look for any fibre transfer from Stephen Lawrence's trousers to the trousers of the suspects, since the deceased's trousers were made of a material which could be expected to shed fibres, and the nature of the attack could have involved direct contact between the lower limbs of the attackers and the victim. That examination was carried out, but revealed nothing of significance.

34. Thus at the time of the unsuccessful prosecution in April 1996, there was no evidence of any transfer of blood from Stephen Lawrence to any suspect, and no evidence of any fibre transfer other than the four fibres, of common types, to which we have already referred. Therefore the scientific evidence at the date of the trial, on its own, failed to produce any link sufficient to place Dobson, or either item of clothing found in his home, at the scene of the fatal attack on Stephen Lawrence. As there was not even a purported identification of him by any witness, there was no case for him to answer.

The investigative process

35. The investigative process which has culminated in the fresh scientific evidence is long and convoluted. We shall provide a brief narrative account of these events, but first we must make some general observations.

36. Dealing with it generally, the process of investigating this murder was marred by incompetence. The criticisms are manifold. When the Kent Constabulary investigated the complaint by Stephen Lawrence's family against the Metropolitan Police on behalf of the Police Complaints Authority, the report which became available in December 1997, concluded that "there were a large number of oversights and omissions which resulted in the murder investigation failing to operate to an acceptable standard."

37. The Stephen Lawrence Inquiry chaired by Sir William Macpherson published its report in February 1999, and again identified considerable deficiencies in the initial investigation into the murder.

38. The Inquiry stated in unequivocal terms that the first police investigation was "palpably flawed and deserves severe criticism" and went on to observe that the second police investigation "could not salvage the faults of the first" investigation. Some of the criticism was directed at the police failure to deal with Brooks in a sufficiently sensitive and unsceptical way. Ample evidence sent to the police in the early stages of the investigation suggested that the "Acourt gang" was responsible for the attack, and that this notorious group was known for carrying knives and threatening behaviour, but there was insufficient police action to ascertain whether supportive information might be obtained from other sources.

39. There is no advantage in detailing all the many criticisms made of the investigative process by the Stephen Lawrence Inquiry, nor indeed to repeat the criticisms made by others. We must, however, note a police report in March 2001 which was very critical of the handling of the exhibits in the case, and suggested that the record-keeping in relation to the movement of exhibits and their storage made it impossible to vouch for the integrity of each exhibit. Perhaps all the ingredients of the sorry story are encapsulated in the fact that as recently as 2008, a very experienced police officer with a most important role in examining the storage and continuity of exhibits, with a view to rebutting criticisms based on potential contamination, was removed from his post. In response to that removal, he apparently sabotaged the integrity of the continuity chart that he was preparing. In short, therefore, from start virtually to finish, the investigation was bedevilled with difficulty.

40. There are two questions for us arising from the unhappy history of the investigations into the death of Stephen Lawrence. The first is whether these difficulties in the investigative process, both at the time, and since, as the case has been examined and re-examined, should lead us to doubt the reliability of the findings now made by the forensic scientists' re-examination of the jacket (LH/5) and the cardigan (ASR/2). The second is to address the possible impact of the history of incompetence in the context of the "interests of justice question" which falls to be considered under section 79 (2)(c), that is, whether the absence of this new evidence from the first trial resulted from investigative failings.

41. It is perhaps worth underlining that the Macpherson Inquiry directed no criticism at the forensic scientists, but rather criticised a number of aspects of the investigation which, as the scientists made clear, made their task more difficult. In the meantime although a number of different investigations of possible new lines were identified, and the murder has been under continuous review until today, the results of these investigations have not produced any new reliable and admissible evidence on which to base the present application, beyond the new scientific evidence which we have been asked to consider. We must now address that evidence, and then having done so, assess it in the light of the submission that the evidence is unreliable as an indication that Dobson was involved in the attack.

42. Within that general context we shall briefly summarise the history of the scientific investigations. This is largely taken from the Crown's analysis of the relevant dates and history. These were not challenged at the hearing before us.

43. The first exhibits submitted by the police were received by the FSS on 28th April, 1993, that is before any of the original suspects were arrested. They were accompanied by a narrative account of the attack, and the initial emphasis was on the

items recovered from around the scene of the attack as potential weapons to be examined for blood. At that stage in the investigation it was thought that the victim had been struck with a "metal bar or piece of wood".

44. Thereafter the results of the searches from the homes of the original suspects were submitted on 15th May 1993. At the time it was routine for fibre comparisons to be undertaken, but on 15th June, Mr Wain of the FSS indicated that it was "unlikely" that fibres would be found on the suspects clothes as they were not arrested, and the clothing was not seized until two weeks or more after the offence. In any event in view of the history of the attack, and the items of clothing themselves, he was extremely guarded about the possibility of establishing any links between the victim and the suspects. The fibre examination would therefore concentrate on the clothes of the victim to see whether there were any matching fibres from the suspects. In July 1993 the FSS confirmed the view that searching for fibres from the deceased's clothes on the clothes of the suspects would not be "worthwhile".

45. In August 1993, the jacket (LH/5) and the cardigan (ASR/2) were first submitted for examination. On 28th October, they were examined by Mr Wain's assistant, Yvonne Turner, whose work that day also included the examination of a set of exhibits from an entirely unconnected robbery investigation (reference number SW/2746/93). At that time she recorded that no tapings were made in relation to LH/5 and ASR/2 when, as we shall see, the Crown relies on taping examinations of these clothes made at the time. We shall return to this clear discrepancy at a later stage, and consider in more detail the evidence to the tapings in question: AW/47 in relation to LH/5, and AW/44 in relation to ASR/2.

46. In brief summary, however, the work carried out by the FSS at this stage was to look for any fibres from the suspects' clothes on the deceased's clothes and for any evidence of blood on items recovered from the scene, in particular any potential weapons, and on the clothing recovered from the suspects. The search for blood involved, in accordance with standard practice at the time, screening with chemicals and a visual examination, with the naked eye, but only involved the use of a low power microscope in relation to specific areas such as seams. No blood was found on any of the potential weapons, and such blood as was found on the clothing could not have come from Stephen Lawrence. The outer clothing of Stephen Lawrence was examined for fibres which may have come from the suspects, but, as we have seen, the exploration/assessment of possible transfer of fibres from Stephen Lawrence's clothing to the suspects was not believed to be a worthwhile exercise because of the lapse of time between the attack and the seizure of the items of clothing. This was in accordance with accepted research at the time.

47. Over the years greater experience and increased knowledge and expertise have produced incremental improvements in the way in which questions of this kind are examined and scientists have reconsidered the way in which they should be conducted. In 2006, a re-investigation of a number of historic or "cold" cases, including this one, began. The new strategy began with an examination, by a new team of scientists from LGC, of the FSS tapings made of Stephen Lawrence's outer clothing for evidence of any paint which could have been transferred from a scaffold pole recovered from near the scene. This examination exposed a series of connected findings which culminated in the discovery of the new evidence. Dealing with it shortly, during the examination of the FSS taping (AW/2) from Stephen Lawrence's

jacket (SP/3) a significant number of red fibres were observed. One possible source of these red fibres was the red polo shirt (SP/5) worn by Stephen Lawrence underneath his jacket and his cardigan. Similar red fibres were also found on a taping (AW/5) taken from his green corduroy trousers. Before these discoveries the red polo shirt (SP/5) had not been considered as a possible source of fibre transfer, just because it was worn beneath Stephen Lawrence's outer clothing. However the discovery of the red fibres led to an examination of AW/47, the FSS taping of the jacket (LH/5), which revealed seven pink/orange fibres and four red/orange fibres which also matched fibres in the red polo shirt (SP/5). From these a search was made for any other fibres from Stephen Lawrence's clothing on the FSS tapings of other items of the clothing of the original suspects, and two green/blue acrylic fibres on AW/47, and three more on AW/44, the tapings from ASR/2 were found, which matched the fibres in Stephen Lawrence's clothing. As the testing proceeded, one particular test using an instrument which provides an objective assessment of the colour returned a result from a component normally associated with the presence of blood on one of the pink/orange fibres found on AW/47, the tapings from the jacket (LH/5) which matched the fibres in the red polo shirt (SP/5). This led the investigation to reflect on the possibility that there might be blood on the jacket (LH/5) notwithstanding the negative results for blood when the item was examined on earlier occasions, and indeed when it was first screened for blood in the initial stages of the new investigation.

48. In earlier days it had not been standard practice in relation to the examination of blood and fibres to examine debris which may have fallen off any exhibits within the bag in which the exhibit was sealed. The debris which had been collected by LGC from the original exhibit bag containing the jacket (LH/5) was also now examined, and this led to the discovery of tiny flakes of blood in the debris. One of the blood flakes had two blue acrylic fibres embedded in it. These fibres matched fibres in Stephen Lawrence's cardigan (SP/2). Testing of the flake containing the fibres and other blood flakes from the same debris in the original exhibit bag produced DNA profiles matching Stephen Lawrence. Thereafter attention switched back to the jacket (LH/5) itself. As the earlier examinations using techniques which were still standard up to 2006 had not produced any positive results, it was decided that the garment should be subjected to a comprehensive wholesale microscopic search. It was this examination which revealed a tiny blood stain on the back of the collar that had absorbed into the weave of the fabric, from which an almost full DNA profile matching Stephen Lawrence was obtained. The more extensive examination also revealed further adhering tiny blood flakes in other places on the jacket. A partial DNA profile, again matching Stephen Lawrence was obtained.

49. Thereafter the FSS taping made in autumn 1993 of the jacket (LH/5) was re-examined. More tiny blood flakes were then discovered, although when DNA testing was carried out, the result was inconclusive.

50. In summary, the revelation of the material which is now relied on by the Crown resulted from careful re-examination of available material using different techniques, and following up each new result as and when it became available to see whether new techniques might produce yet further fresh evidence. We shall summarise the results.

The new evidence concerning clothes found at Dobson's home

The grey jacket (LH/5)

(a) A tiny blood stain was found on the exposed part of the collar when the collar is folded down. The stain is very small indeed, with a visible area of 0.5mm x 0.25mm. It was partly soaked into the white yarn of the fabric with some thicker parts on the surface, and heavy in the centre. It had a different overall appearance to the flakes adhering to the grey polyester outside surface. An almost full DNA profile matching Stephen Lawrence was obtained. (1:billion).

(b) 43 blood flakes were also found, mostly on the grey fabric on the outside of the jacket, but also on a part of the inner padded lining of the jacket, which was exposed when part of the outer material was cut away in the course of the scientific examination in the 1990s. These flakes adhered to the jacket as discrete flakes, and were not absorbed into the weave. Some of the fragments have been tested and have been identified as blood, and the others which have not been tested appear to be blood. By aggregating a number of fragments it has been possible to obtain an incomplete DNA profile matching the DNA profile of the deceased (1:500).

Tapings from LH5 made during the course of the original investigation (AW/47)

(a) Flakes or fragments were found on the tapings taken from the outer surface of LH/5 which gave a positive reaction for blood when tested, but without providing any conclusive DNA profiling.

(b) Four rare red-orange polyester fibres and seven quite common pink-orange cotton fibres, all of which were microscopically indistinguishable from the fibres in Stephen Lawrence's polo shirt (SP/5) were found on the tapings.

(c) One of the pink-orange fibres gave a spectrum result which corresponded to a bloodied fibre from SP/5, and was more likely to have produced that result due to the presence of blood than because of colour variation.

(d) Two quite rare green-blue acrylic fibres which were microscopically indistinguishable from the fibres in the cuffs/waistband of Stephen Lawrence's jacket SP/3 were found.

(e) Five grey cotton fibres of no probative significance were also found.

Debris from the original packaging of LH/5, collected by LGC during the recent investigation.

(a) A taping of debris from the inside of the original bag of LH/5 revealed an apparently neat blood fragment encasing two blue acrylic fibres. The blood fragment was found to have an almost full DNA profile matching Stephen Lawrence (1:billion). One fibre was a quite rare long blue acrylic fibre which entered and exited the blood fragment. The other was a shorter blue acrylic fibre, also quite rare, which was encased within the blood fragment and only discovered when the fragment was broken open. These fibres must have come into contact with the blood when it was wet. Both these fibres are similar to each other, and could have come from SP/2, Stephen Lawrence's blue cardigan.

(b) Fragments of blood were found within the debris. Three of these were combined and found to have a full DNA profile matching Stephen Lawrence (1:billion).

(c) One red-orange polyester fibre of a rare type which is microscopically indistinguishable from the fibres in the deceased's polo shirt (SP/5) was found inside an exhibit bag which had been used to repackage LH/5.

The new evidence concerning the multi-coloured cardigan (ASR/2)

Taping taken from ASR/2 during the original examination (AW/44).

(a) A single flake was found on this taping which gave a positive reaction for blood. Three quite rare blue-green acrylic fibres microscopically and instrumentally indistinguishable from the cuff/waistband of the deceased's jacket (SP/3) were found.

Taping taken during original investigation from Stephen Lawrence's jacket (SP/3) (AW/2)

Three common blue wool fibres which could have come from ASR/2 were found of this taping. However the significance of these fibres is debatable because ASR/2 is made up of so many colours and shades of wool that there must be a greatly increased chance of finding matching wool fibres on an item selected at random compared to finding a wool fibre from an item which contains only one shade of wool.

Taping taken during the original scientific examination from Stephen Lawrence's trousers (SP/8) (AW/5)

One common turquoise blue fibre was found on this taping which was microscopically and instrumentally indistinguishable from the same fibres in ASR/2.

We shall not repeat the findings which were before the court in 1996.

51. Expert evidence produced by the prosecution summarises the significance of these new findings in relation to the jacket (LH/5). The findings in relation to fibres provide:

> "Extremely strong scientific support for the assertions that the evidential fibres found within the material recovered from the grey jacket (LH/5) originated from the clothing of Stephen Lawrence, rather than being due to chance matches…the numbers of matching fibres present on the jacket are …higher than one might expect if they were from secondary transfer and far more so than if they were due to a tertiary transfer…the presence of the fibres provides at least moderately strong scientific support for the assertion that they arrived as a result of primary contact with the clothing of Stephen Lawrence rather than having arrived by an indirect route."

52. Addressing the new findings in relation to blood and fibres together:

> "The simplest explanation is that the wearer of the jacket was involved in the attack and the blood and fibres that were found

> were what remained of the evidential material transferred…it is extremely unlikely that blood just happened to fall upon or come into contact with fibres already transferred to the jacket, and far more likely that the blood stained fibres found were transferred to the jacket in an already bloodied state. If collectively or individually they did not arise from primary transfer, the blood, the blood-stained fibres and the un-bloodied fibres (in the number and range of types found) would all have had to have been deposited by some indirect route or routes, involving contact with the jacket when some of the blood at least was still wet…when considered in combination, the explanation that blood, bloodstained matching fibres and non-bloodstained fibres deposit by secondary transfer is, in my opinion, an unlikely explanation for the evidence that has been found. The evidence is even less likely to have been found if it is proposed that the fibres were acquired by the jacket during a secondary transfer event and the blood and bloodstained fibres by a separate transfer event…the combination of blood/DNA and fibres provides extremely persuasive evidence to link the wearer of the grey jacket (LH/5) to the attack itself and/or to contact with the perpetrators soon afterwards."

53. The possible conclusions in relation to ASR/2 are more limited. In particular, although the finding in relation to the three green-blue acrylic fibres provides strong scientific support for the proposition that the fibres originated from SP/3, and moderate scientific support for the assertion that they were transferred as a result of primary contact between the two items of clothing, the findings in relation to the three blue wool fibres and the one turquoise fibre lack significance because ASR/2 contains so many colours and shades of wool.

54. These new findings, relating to garments which can be linked to Dobson are crucial to the present application. The question is whether they have revealed items of blood flakes and blood stains and fibres which demonstrate that Dobson was in very close proximity to Stephen Lawrence at or in the immediate aftermath of the fatal attack, or whether some reasonable alternative explanation for them, either as a result of contamination, or the absence of sufficient security against the risk of contamination, or the consequence of the process of the original examinations and tests themselves may be available. It is virtually self-evident that this is substantial highly probative evidence of the involvement of Dobson in the killing of Stephen Lawrence, provided, and it is a very important proviso, it is established that it is reliable, not so much in the sense that the integrity or competence of the current scientific conclusions may be open to question, (which has not been contended before us) but, much more important, that the findings may be explicable on some reasonable alternative basis, such as possible contamination, even if entirely inadvertent and accidental. In essence, this is the core of the submissions by Mr Roberts, and he relies on the fact that none of the material now relied on was found during the course of the long history of investigations and examinations of the jacket (LH/5) and the cardigan (ASR/2) over the years.

55. His submission is illustrated by reference to a specific feature of the case, that Dr Gallop, when she conducted her investigation for the purposes of the first trial, had said that the polo shirt (SP/5) was not a suitable source for the transfer of fibres because it was an undergarment, and that the jacket (SP/3) was not made of material which would be expected to retain fibres. Now, Mr Roberts pointed out, the Crown asserts that the polo shirt (SP/5) shed fibres on to the deceased's outer garment to such an extent, and his jacket (SP/3) retained those fibres to such good effect, that no fewer than eleven fibres from SP/5 are said to have been transferred to the jacket (LH/5) found in Dobson's bedroom. That he suggests is inherently implausible. The more realistic explanation, he submits, is to be found in the way in which the exhibits have been handled over the many years since the jacket (LH/5) was seized by the police.

56. We must examine the submissions made by Mr Roberts in sufficient detail to explain them, and our understanding of them, but we shall not prolong the judgment by reference to the many hundreds of pages of material which we have examined.

57. Mr Roberts began by making a general submission about the way in which the exhibits in this case were packaged. He pointed out that the long-established practice of packing exhibits in paper bags sealed with sellotape is out of date, and in the context of a case which has continued over many years, is inherently unreliable. With the passage of time, the sellotape loses its adhesive quality and the result is that the seal of the bag will eventually break, either in full or in part. When that happens all or part of the bag may gape open, and thus an opportunity for tiny particles to enter into it and come to rest on the exhibit within is provided. As the exhibit bag is handled and moved about, the break in the seal may be caused to gape and then to close, so it is impossible to predict when the seal has failed, or whether it has failed: much may depend on the precise type of sellotape used for the purpose, and the temperature of the room in which the bag sealed by the sellotape is stored. There was no system for periodic inspection or renewal of the sellotape seals. There is no industry standard which suggests the appropriate period for which sellotape should be regarded as providing a reliable seal for a paper bag. The failure of a seal may only be identified after it has failed, by when, it will already be too late to preserve the integrity of the exhibit contained in the paper bag.

58. Mr Roberts supported this submission by drawing our attention, first, to an internal police report prepared by Detective Chief Superintendent Webb, which referred to a problem he had raised with the forensic scientist, Mr Wain, namely "that of the deterioration of the packaging of the clothing exhibits…the original sellotape seals used when the items were seized in 1993 had become so ineffective, that in Adrian Wain's view, in the event of alien blood cells being found on the suspects' clothing in any subsequent examination, he would be unable to rule out the possibility of contamination having occurred at the point of storage". Mr Roberts came to the report of the review of the exhibits carried out by DC Sloper in 2001. This review documented a number of exhibit bags which were not securely sealed. Thus the sack (SP/1) was sealed and secure, but of the exhibit bags within it, those containing both the cardigan (SP/2) and the jacket (SP/3) of the deceased were "open at sellotape seal line": so too was the exhibit bag containing the multi-coloured cardigan (ASR/2).

59. Mr Roberts addressed the prevailing view during the 1990s that once a scientific examination had been completed, it was no longer of great importance to handle the

exhibits carefully. Thus, by way of example, he suggested that the handling of exhibits at court paid little or no heed to the necessity to preserve the integrity of the exhibits for the future, and to avoid the risk of fibres or other debris being shed into the exhibit packaging, or even on to another exhibit. He pointed to the particular feature that the unsuccessful prosecution in 1996 was conducted privately, with the result, he suggests that there can be no confidence that the proper procedures were followed, or at any rate no sufficient confidence that they were.

60. Mr Roberts moved to the evidence that exhibits were "over bagged". In short, this means the placing of one or more wrapped exhibit into a larger bag or sack for ease of transport or storage, which clearly happened in this case, without any attempt to avoid mingling wrapped exhibits from more than one source in the same sack. It is, however, important in this context to underline that each of the exhibits within the larger bag or sack would itself continue to be wrapped in its own individual bag. Mr Roberts highlighted a number of risks, and the scientists who gave evidence before us agreed with him that they included: the possibility that the seal of an exhibit bag might fail; or without proper procedures, that even a sealed exhibit bag may bear on its outer surface fibres or fragments of blood which have fallen from the exhibit before it was packaged and sealed. Movement of the packages within the larger bag may then cause such fibres or fragments to be dislodged from the outer surface of one bag and to land on another bag; if the seal of the second bag happens to have failed, so that it is open, fibres or fragments might enter it and come to rest on the exhibit within, or indeed fall into the debris, with the result that an entirely spurious finding might then arise; and finally, even if the seal of the second bag is intact there is an opportunity, in the event of inappropriate exhibit-handling, for the exhibit to pick up fibres or fragments from the outer surface of its bag.

61. Mr Roberts went on to submit that there was clear evidence to indicate that from time to time poor practice was adopted or inadequate care taken with the handling of exhibits. The particular examples, which go beyond the general account of incompetence to which we have already referred included:

    i) The Macpherson Report noted that one exhibit had been lost altogether, in circumstances which were condemned as "unforgivable".

    ii) In the later 1990s Kent Constabulary investigated a complaint against the Metropolitan Police in relation to this case, and thereupon took possession of all the exhibits. Once they were returned to the Metropolitan Police, a review found that 14 items could not be traced; 56 items were present which had not been recorded an at earlier stage; and the Kent Constabulary had returned over 300 exhibits in five boxes without any form of continuity documentation.

    iii) The Sloper Report in 2001, which set out the impossibility of vouching "for the integrity of each exhibit", although the Report went on to conclude "that in the vast majority of incidents in this case the integrity of the exhibits is sound and strong rebuttal of any alleged contamination can be made. There being very few occasions when exhibits have been co-mingled, and where they have, most of the exhibit packaging has been sealed and secured. The only doubt I had is what happened to the exhibits at the private prosecution".

iv) The photographs showing that two exhibits were in turn removed from their packaging and placed onto the same piece of carpet in order to be photographed, a demonstration of a clear opportunity for the exhibit which was photographed second to pick up fibres or fragments from the exhibit which had been photographed first.

62. Mr Roberts concluded this part of his submission by reminding us of the actions of the officer engaged in conducting a detailed review of the exhibits, who following his arrest for an incident of disorder while on holiday, was removed from the case, and deliberately altered some of the computerised records. Mr Roberts underlined that no one can know how extensive the alterations were, because only the officer himself knows for sure.

63. Turning to particular matters highlighted by Mr Roberts, particular emphasis was placed by him on the potential contamination arising from what happened at hospital. Naturally the concern of the hospital staff was to do everything possible to save Stephen Lawrence's life. The process of cutting away the upper clothing from his body would have released fibres from each of the garments, and blood (wet at that stage but later dry) would have fallen from any of those garments which were bloodstained. Therefore the plastic sack (SP/1) into which all the upper clothing was placed would have contained within it a potent source of material which could be transferred onto another exhibit if proper exhibit-handling procedures were not observed. If that occurred, it would be a matter of chance which fibres were transferred: thus the recipient garment might end up bearing fibres from all or any of the Stephen Lawrence's upper garments. Mr Roberts reinforced his point by noting that Stephen Lawrence's cardigan (SP/2) was so heavily bloodstained that at a much later stage it was used as a source of dried blood flakes for some recent scientific investigation. Turning from the general observations, he made a specific submission in relation to the important bloodstain on the jacket collar (LH/5) and the fragments of blood or apparent blood recently found on that jacket. He suggests that the finding of blood fragments on the inner lining of the padding of the jacket, an area which would not have been exposed at the date of the fatal attack, and was exposed by later being cut open in the laboratory, clearly shows that the blood fragments must have come onto the jacket at a later date than the time of the fatal attack. The suggested explanation is that the presence of these fragments is an artefact of Phadebas testing on the jacket itself.

64. Dealing with it as briefly as we may, Phadebas testing is a test for the presence of saliva. The test is performed by wetting the garment which is to be tested and placing on to it a sheet of paper which has been treated with a reagent. The paper is then covered with a sheet of glass, on to which weights are placed. The paper is then examined at intervals for the staining which is displayed if saliva is present. This testing process was carried out in relation to the jacket (LH/5), not as part of the initial scientific examination of the jacket, but at a much later date. Mr Roberts makes the point that no blood was found on the jacket before the Phadebas test was carried out, but blood was found on it afterwards.

65. A series of detailed experiments were carried out to see how fragments of blood behave if they are present on a garment which has been made the subject of the Phadebas test. They show that when dampened the fragments resolubilise and acquire a gel-like consistency which can cause them to adhere to the surface of the garment.

On this basis the possible explanation for the presence of the 43 fragments of blood or apparent blood on jacket (LH/5) is that fragments of dried blood have come on to it after its initial examination, having been resolubilised when the jacket was dampened for the purpose of the Phadebas testing, and so they adhered to the garment. That possibility was accepted by Mr Edward Jarman, an expert called before us by the Crown, and we did not understand the Crown to argue to the contrary.

66. It is the next stage in the submission which is perhaps more important. Mr Roberts submitted that the tiny blood stain on the collar of the jacket (LH/5) may also be an artefact, produced in a similar way. Mr Jarman accepted that he could not exclude that proposition as a scientific possibility, because the situation was complex with a number of variables, and he was unable to discern the precise composition of the bloodstain. He was however able to say that the blood had soaked into the collar, and therefore the blood which caused the stain appeared to have been deposited when wet. In detailed experiments he had been unable to produce a similar stain: resolubilisation of a dried blood fragment did not in his experiments reproduce or mimic the tiny stain found on the collar. Thus the experiments which did show that the fragments of blood or apparent blood on the jacket could be an artefact of the Phadebas testing did not produce such a result in relation to the bloodstain on the collar. Mr Jarman therefore maintained the view expressed in his written statement (which stood as his evidence in chief for the purposes of this hearing), that the bloodstain on the collar was in a different category to the fragments of blood or apparent blood on the jacket, and while he accepted the scientific possibility that the collar stain, too, could be an artefact of the Phadebas testing, he thought it unlikely. He expressed his conclusion in strong terms. The collar stain was "far more likely" to have the characteristics which he observed if it was related to the fatal attack than if it was a consequence of the Phadebas testing.

67. Mr Roberts attached significance to the fact that there was no stain on the jacket (LH/5) which could indicate the earlier presence of a spot of blood which had fallen off and thereby created the fragments of blood which subsequently adhered to the jacket. This, he submitted is a feature which is consistent with the view that the fragments of blood recently found on the jacket (LH/5) are the result of cross-contamination. However we were told by Mr Jarman that when a spot of blood dries and falls off a garment, the scientists will not always find any visible stain or other trace that it has been there. He also told us that the total amount of blood present on the jacket was very small. The aggregate quantity was such that all the 43 fragments could have had their origin in a spot of wet blood on the collar, some of which had fallen off when dry, thus producing the tiny fragments of blood loose within the exhibit bag as well as the small stain on the collar.

68. The other specific target at which the submissions by Mr Roberts were directed was the tapings AW/47. We must begin with a slightly more detailed history. On 28th October 1993 Mrs Turner worked both on the present case, and on an unrelated case of armed robbery. This was the only date on which she was engaged working on both these cases. The FSS reference for the present case was M/1595/93; the reference for the armed robbery was SW/2746/93. In the robbery case there was neither an exhibit LH/5 nor an exhibit ASR/2. Although Mrs Turner examined fibres in the robbery case, they were not of the same type as the fibres with which the present case is concerned. On that day Mrs Turner made handwritten notes of her examinations of

LH/5 and ASR/2. However her handwritten notes were initially marked by her with the case reference SW/2746/93, plainly a clerical error, and later corrected by over-writing the reference M/1595/93. There is no evidence before us about precisely when this was done, but there is clear evidence, undisputed for present purposes, that it had been completed by July 1995 when the notes were sent to Dr Gallop prior to the private prosecution.

69. In the body of her notes relating to the two garments, Mrs Turner recorded in each case that she had taken a fibre sample, but also wrote down in each case "no tapings made". She later compiled a "fibre examination sheet" relating to these and other exhibits, which she told us she produced by referring to her examination notes, so unsurprisingly, this sheet repeated the record in relation to both LH/5 and ASR/2, "no tapings made". All those documents were checked at the time by Mr Wain, and he did not notice that any error had been made.

70. As we have already indicated, Mr Wain had taken the policy decision that it would not be worth looking for any sign of fibre transfer from the deceased's clothes to the clothing of the suspects, and he acknowledged in his evidence before us that a decision not to take any tapings from either LH/5 or ASR/2 would be consistent with that policy decision. However, notwithstanding the policy, and despite having written the words "no tapings made" in her notes, Mrs Turner's evidence was that she did take tapings from both garments. Unfortunately, she repeated her clerical error by giving AW/47, tapings from LH/5, the case reference SW/2746/93. At a much later stage, when Mr Wain was looking for AW/47 he found AW/47 not in the file relating to the present case, but rather in the file relating to the armed robbery.

71. Mrs Turner accepted that her contemporaneous notes record an unequivocal statement which is the exact opposite of her evidence, and she accepted that it was an aberration for her have made the notes she did when she had in fact taken tapings from both garments. Mr Wain was referred to a note he made in 2001 in which he expressed the conclusion that LH/5 was taped in 1995. He told us that he could not now remember why he had expressed that conclusion which he no longer believed to be correct. He felt that he had been trying to reconcile Mrs Turner's note of "no tapings made" with the fact that Dr Gallop undoubtedly did examine AW/47 in 1995, so he had assumed at that time that the tapings had been taken then.

72. We do not underestimate the difficulty for the Crown in proving that the tapings AW/47 were taken on 28th October 1993. What however is clear is that on that date clerical errors were made, and so (subsequently) were filing errors, in the sense that AW/47 was found not in the file relating to the present case (to which it undoubtedly related) but in relation to the armed robbery. The evidence of both Mrs Turner and Mr Wain was to the clear effect that if the tapings had been taken at some later date, that is later than 28th October 1993, there would have been a separate record of what she had done, and that the incorrect case reference from AW/47 is only explicable on the basis that she had been working on both cases at that date. It seems to us highly likely that Mrs Turner did indeed take the tapings AW/47 on 28th October 1993, but in any event, our decision overall is not exclusively based on the current scientific findings in relation to AW/47.

73. We have examined Mr Roberts' submissions in the light of the evidence before us, which includes a Report on the continuity and integrity of significant exhibits dated

March 2011 by DS Taylor. The officer has examined every detail of the available evidence about these exhibits. The result of his work has been submitted to another witness, Mrs Hammond, who has specifically considered all the criticisms and suggestions made by Mr Roberts on behalf of the respondent about how and when cross-contamination between exhibits may have occurred. For this purpose she assumed the worst-case scenario in relation to matters which were not the subject of clear evidence. Her overall conclusion was that she accepted there had been a number of hypothetical opportunities for cross-contamination to have occurred, but on detailed examination the risk of such cross-contamination was so remote that it could safely be excluded. We have considered all her written and oral evidence together with each of the factual situations to which she has referred, but it is unnecessary and inappropriate to recite the details in this judgment.

74. We take one example. It was pointed out on behalf of the respondent that when the jacket (LH/5) was returned to the police by the FSS in November 1995, it was over-bagged with the deceased's jacket (SP/3). Mrs Hammond accepted the hypothetical possibility that blood flakes and fibres could have been present on the outside of the bag containing SP/3, could then have been transferred to the outside of the bag containing LH/5, and then could later have come on to exhibit LH/5 itself. But, having conceded this as a hypothetical possibility, she explained that it is so unlikely that, in practical terms, this sequence of events is effectively impossible. There would have had to be a surprising combination of events, each of which, on its own, was unlikely, and any such contamination in or after November 1995 would be a remarkable coincidence having regard to the findings on the tapings (AW/47).

75. More generally, Mrs Hammond gave evidence that she can see no realistic possibility of contamination in relation to tapings having occurred in this case or that the new evidence was affected by cross-contamination. The new evidence is mainly based on tapings taken in the laboratory, tapings which are secure, and so the only period which needs to be considered is the period before they were taken. The possibility of transfer between the packages is extremely remote because if there was anything on the outside of the packaging it would only remain there for a limited period, and on every occasion the package is handled, a proportion of any such material would be lost, so reducing yet further the possibility of a later transfer. Dealing with it generally, we accept the evidence of Mrs Hammond and her conclusions.

76. We would simply add that the answers given by Dobson when he was first questioned about the jacket (LH/5) were not merely that he had not been wearing it at the scene of the fatal stabbing, but that no one had worn it for ages. On this account, the combination of improbable coincidences required for the suggested "accidental" contaminations would have had to have occurred in relation to a garment which, according to Dobson himself, had not even left the home of its owner for a long time. That seems a remote possibility.

77. In summary, therefore, we accept the evidence of Mrs Hammond that there has been no realistic opportunity for cross-contamination to have occurred in a way which would or could affect the new evidence, and this evidence is highly probative of the conclusion that the fibres and blood to which we have referred were indeed present on the jacket (LH/5) and the cardigan (ASR/2) because those clothes were worn by a person or persons who were in very close proximity to the attack on Stephen Lawrence rather than as a result of some later contaminating event or events. We also

accept Mr Jarman's evidence that none of his experiments with resolubilisation reproduced a stain such as that found on the collar of LH/5, and while we respect his view that there is a scientific possibility which cannot be excluded, we are also satisfied that his evidence as a whole is highly probative of the conclusion that the explanation for that stain does not lie in resolubilisation. In effect therefore we accept the Crown's contention that the new scientific evidence provides reliable evidence that both the jacket (LH/5) and the cardigan (ASR/2) were being worn by an individual or individuals who participated in the attack on Stephen Lawrence.

78. Stripped to essentials, it comes to this. On the jacket found in Dobson's bedroom (LH/5) there were small blood flakes providing an incomplete DNA profile with Stephen Lawrence, and a very small bloodstain on the collar which provided a match of 1: billion. Within the package in which that jacket was contained, a blood flake with another DNA match of 1: billion, encasing two blue fibres linked with Stephen Lawrence's cardigan, deposited while the blood flake was at least partially wet, were found, together with a fibre linked to Stephen Lawrence's red polo shirt. The jacket was placed within the package and we have not found a shred of evidence to suggest that any other object was placed in the package at any time. We recognise the more limited conclusions which may be drawn in relation to the cardigan found in Dobson's parents' bedroom, but they are at the very lowest, consistent with the links between the jacket and Stephen Lawrence. However, viewed cumulatively, even allowing for the contentions advanced by Mr Roberts, this provides formidable evidence.

79. The potential significance of the material which we have examined can be readily understood. Is the newly discovered evidence reliable, substantial, and highly probative of the Crown's allegation that Dobson was a party to the attack on Stephen Lawrence? The new evidence demonstrates that the answer to that question is that there is a high probability that he was. Assuming that a new trial is ordered, it would be for the jury to decide whether his guilt was established to the criminal standard of proof, and if so whether of murder or manslaughter. For this purpose it would no doubt consider all the relevant and admissible evidence, including the clear and direct lie apparently told by Dobson when he was first asked to account for his movements on the fateful evening. On his own admission to the police when formally interviewed, that was untrue, but that falsehood was of relatively minor significance compared to the significance of the falsehood which would have been uttered if the jury were satisfied that the scientific evidence demonstrated that Dobson was indeed one of the group of assailants who attacked Stephen Lawrence.

The "interests of justice" under section 79

Publicity

80. There can be no doubt that this case has attracted an unusually high level of media attention. We have been supplied with a vast volume of material based on media references to the murder of Stephen Lawrence. We doubt whether very many individuals, other than those directly involved in this case, will have seen this encyclopaedic volume, and in relation to newspaper cuttings, each entry will have formed part of the entire newspaper and lacked the stark impact of an article standing on its own. It is possible to discern a number of reasons why the case has continued to attract public interest. In part it is because every decent individual in this country

(whatever his or her racial background) had come to hope that racism with such desperate consequences had been eradicated from our society. It is caused in part by the overwhelming wave of public sympathy for the parents of Stephen Lawrence and the dignified way in which they have endured the disaster that has overtaken them. And it is also caused in part because, for whatever reason, no one has been brought to justice for a killing which occurred on the streets of London. Nothing reported by the media before the trial was open to criticism, and as far as we know the reporting was not criticised before or at the trial before Curtis J and the jury at the Old Bailey. Similarly, no real criticism can be directed at the reporting of the trial process or the verdicts. However the reality is that once the defendants were acquitted, the rule against double jeopardy meant that there was no prospect of a second trial for the acquitted men, and as a matter of reality, no realistic prospect of any trial of the remaining two of the original suspects. There was no reason at all for any newspaper or television company to be circumspect in its reports and comments, or, subject only to the laws of defamation, to hold back from expressing robust views about the case, or the investigative process, or even the identity of those believed to have been involved in or responsible for the death of Stephen Lawrence. The enactment of the 2003 Act, as we have explained, abrogated the rule against double jeopardy, and in the strictly limited situations identified by ss 77 and 78 of the 2003 Act, the court was vested with jurisdiction to quash an acquittal and order a new trial. By then, however, the case was more than a decade old, and until recently there was nothing to suggest that evidence might emerge which could bring this particular case within the ambit of the new statutory arrangements. Indeed the overwhelming proportion of material drawn to our attention entered the public arena before 2002.

81. News "spikes" have continued since the collapse of the prosecution in April 1996. Particular features which re-ignited media attention took place in February 1997 when the five original suspects gave evidence at the inquest into the death of Stephen Lawrence, in June 1998 when all five attended the well known Macpherson Inquiry, and again in February 1999 when the Inquiry's report became available; in April 1999 when the five suspects gave television interviews, denying any involvement in Stephen Lawrence's death, and in the case of Dobson, also gave a radio interview; in Spring 2000 a BBC Crimewatch programme about the case attracted a further "spike"; in July 2006 BBC Television broadcast a documentary about the five suspects entitled "*The Boys Who Killed Stephen Lawrence"*; in November 2007 there were reports of a forensic breakthrough in the case, and in July 2010 further reports were published about recent developments in the investigation.

82. Quite apart from these "spikes" the Daily Mail, which appears to have taken a particular interest in this case, alleged in express terms on 14 February 1997 that the five suspects were "murderers", directly accusing them of involvement in the murder, and challenging them to sue for libel if the allegations were wrong. The same headline appeared on the front page of the Daily Mail on 27 July 2006, immediately after the broadcast of the documentary *The Boys Who Killed Stephen Lawrence*.

83. Mr Roberts identified two strands to the publicity, the first of which involved allegations of discreditable or criminal conduct or facts connected with one or other of the original suspects detrimental to them, and the second, expressions of opinion that they, or some of them, were indeed responsible for the attack on Stephen Lawrence and guilty of his murder. He suggested, too, that some of the publicity followed a

deliberate attempt to attract publicity to the work that was being done by those responsible for the new investigation, LGC. We have examined the material with the submission in mind, and accept that without over-compartmentalisation, the strands identified by Mr Roberts are clear, and, that the deliberate attempt to seek publicity at the time (whether by LGC, or someone else) was inappropriate.

84. The issue is stark. The question is not whether the publicity over the years was wise or ill-advised, but whether now, or at the date when the new trial, if ordered, would take place, the impact of that publicity would make a fair trial unlikely. Mr Roberts submitted that the effect of the publicity would be to prejudice any future juror, perhaps without the juror in question even appreciating that he or she had unconscious prejudice against any of the original suspects. The effect would be insurmountable. Mr Mark Ellison QC for whose equally careful submissions we are no less indebted, accepted that over the years there had been publicity for the case which was potentially prejudicial to the suspects, but he argued that the difficulties identified by Mr Roberts could and would be dispelled by appropriate judicial direction, in a trial in which the emotional aspects of the case would quickly give way to the practical reality that the jury would have to concentrate on the new scientific findings, the circumstances in which they were made, and the weight to be attached to them in the light of the defence case that post-incident contamination could not be excluded.

85. If Mr Roberts is right, whatever new evidence may emerge, however powerful it may be, neither of the two original suspects who have not faced trial could ever face trial, nor could any of the three original suspects who have been tried and acquitted, be made the subject of a successful application for the acquittal to be quashed and a new trial ordered. That is because, on Mr Roberts's contention, any further trial, however carefully managed, regardless of the directions given by the judge, would be unlikely to be fair. In effect therefore, if he is right, the publicity over the years has now created an ineradicable prejudice against them with the result that they have been immunised against the risk of prosecution. That would indeed be a remarkable result.

86. Our conclusion is a matter of impression based on a careful analysis of the material which contains the potentially prejudicial publicity and ultimately judgment. Among the potential jurors there are bound to be many who will have memories about this case and about the killing of this particular young man in the street, and many of them will be alert to the unrequited anguish of his parents and his family. Some are likely to have an abiding impression that no one has yet been brought to justice, and to that extent, that justice has not been served. A few may remember that some in the media have asserted that the original five suspects were responsible for Stephen Lawrence's death and therefore guilty of murder. In short, as in *Montgomery v HM Advocate* [2003] 1 AC 641:

> "…the risk that the widespread, prolonged and prejudicial publicity that occurred in this case will have a residual effect on the minds of at least some members of the jury cannot be regarded as negligible." (per Lord Hope of Craighead)

That however does not decide the question.

87. In his speech Lord Hope went on to analyse the safeguards which in such cases are provided to ensure the objective impartiality of the trial, the trial process itself and the conduct of the trial by the judge. He described how:

> "On the one hand there is the discipline to which the jury was subjected of listening to and thinking about the evidence. The actions of seeing and hearing the witnesses may be expected to have a far greater impact on their minds than such residual recollection as may exist about reports about the case in the media. This impact can be expected to be reinforced on the other hand by such warnings and directions as the trial judge may think appropriate to give them as the trial proceeds…the entire system of trial by jury is based upon the assumption that the jury will follow the instructions which they receive from the trial judge and that they will return a true verdict in accordance with the evidence."

88. The same approach was adopted by Lord Phillips CJ in *R v Abu Hamza* [2007] 1 Cr App R27 at 371 where he acknowledged:

> "Prejudicial publicity renders more difficult the task of the court, that is of the judge and the jury together, in trying the case fairly."

However he continued:

> "The fact, however, that adverse publicity may have risked prejudicing a fair trial is no reason for not proceeding with the trial if the judge concludes that, with his assistance, it will be possible to have a fair trial."

89. The report includes detailed extracts of the approach of the trial judge, Hughes J (as he then was) which may be of assistance to the trial judge in the present case.

90. The final consideration in our assessment is to repeat the feature of trial by jury identified in *Re B* [2006] EWCA Crim 2692:

> "…which is sometimes overlooked or taken for granted…that juries up and down the country have a passionate and profound belief in, and a commitment to, the right of a defendant to be given a fair trial. They know that it is integral to their responsibilities. It is, when all is said and done, their birthright; it is shared by each one of them with the defendant. They guard it faithfully. The integrity of the jury is an essential feature of our trial process. Juries follow the directions which the judge will give them to focus exclusively on the evidence and to ignore anything they may have heard or read out of court…we cannot too strongly emphasise that the jury will follow (appropriate directions), not only because they will loyally abide by the directions of law which they will be given by the judge, but also because the directions themselves will

> appeal directly to their own instinctive and fundamental belief in the need for the trial process to be fair."

91. Having reflected carefully on the submission made by Mr Roberts, we have concluded that a fair trial can take place, or putting it another way, that the vast publicity relating to this particular case is unlikely to render the subsequent properly conducted trial unfair.

Delay

92. We have described the processes undertaken in 1993, and how this new evidence has come to light. The delay is significant, but we can find no real prejudice to the proper preparation and conduct of the defence arising from the delay. As to whether the new evidence could have been adduced in the earlier proceedings, although we accept that there was an absence of diligence or expedition in the earlier part of the investigations, we have explained why and how the new evidence emerged, and are satisfied that even with proper diligence, the evidence which has now become available would not have been appreciated at that time.

Conclusion

93. The application by the Director of Public Prosecutions for an order to quash the acquittal of Gary Dobson on 25th April 1996 will be granted, the acquittal will be quashed and a new trial will be ordered.

94. We shall hear submissions about the terms of the order, and the way in which this judgment should be published.