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IN THE HIGH COURT OF JUSTICE
AT NOTTINGHAM

200300595W3*2

The Law Courts
Canal Street
Nottingham

5th September -
4th October 2001

C

Before:

THE HONOURABLE MR. JUSTICE POOLE

D

R-E-G-I-N-A

- v -

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MICHAEL JOHN STONE

(Transcript from the official stenographic notes of
Cater Walsh & Partnership, Suite 410, Crown House,
Bull Ring, Kidderminster. Tel. Number: 01562 60921)

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MR. N. SWEENEY, Q.C. and MR. M. ELLISON appeared for the
prosecution

MR. W. CLEGG, Q.C. and MR. J. INGRAM appeared for the
defendant STONE

LIST OF WITNESSES, SUMMING-UP & VERDICT

LIST OF WITNESSES

The following witnesses were called on behalf of the prosecution:

Monday, 10th September 2001
Laura CRAVEN, Sworn

Tuesday, 11th September 2001
Shaun RUSSELL, Read
Patricia GROVES, Read,
Pauline RADAGE, Read
Deborah BROWN, Read
Jill AUSTIN, Read
William BLAKE, Read
Nichola PHILLIPS, Read
✓ Josephine RUSSELL, Read
✓ Edwin TINGLEY, Sworn
✓ Nichola BURCHELL, Sworn

Wednesday, 12th September 2001
Edwin TINGLEY, (Continued)
Anthony RAYFIELD, Sworn
Isobel COLE, Sworn
Trevor JACKSON, Sworn
Norman BAILEY, Read
David TUFF, Read
Ann ROTVIK, Read
Detective Constable Samuel MANSFIELD, Read
Elizabeth GREGSON, Read
Police Constable Gavin FOX, Sworn

Thursday, 13th September 2001
Roger NEWSOM, Read
Dr. Michael PARKES, Read
Steven GRIFFITHS, Sworn
James FRASER, Sworn
Scott HAYES, Read
Ian HAYES, Read
Ian HAYES, Read
Justin WOODROW, Read
Kerry CAULFIELD, Read
Tracey CARR, Read
Rodney GOWERS, Read
Patrick WHITING, Read
Lindsey SMITH, Sworn
Dr. Michael HEATH, Sworn
Sylvia BEARD, Sworn
Elaine FIVEASH, Sworn
Gail STYLES, Read
Ella STYLES, Read

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Beverley Herr, Read
Kenneth HARRISON, Read

Friday, 14th September 2001
Sheree BATT, Sworn

On 17th and 18th September, the court was on a site visit to
Kent

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Wednesday, 19th September 2001
Damien DALEY, Sworn

Thursday, 20th September 2001
Roger Hope IDE, Sworn

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Friday, 21st September 2001
No witnesses were called

Monday, 24th September 2001
Roger MANN, Sworn

Michael PASS, Sworn
Peter SHRUBSOLE, Read

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Gareth DAVIES, Read
Steven REYNOLDS, Read
Steven WHITEING, Read
Kevin TWYMAN, Read
Colin BROWN, Read
John KIRTLEY, Read
Anthony WESTCOTT, Read
Dale LIDDLE, Read
Thomas HILLS, Read

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Tuesday, 25th September 2001
Russell Scott NYMAN, Read
Detective Sergeant Richard BOWLER, Sworn
Detective Constable Paul PHIPPIN, Read
Detective Inspector David NEILSON, Sworn
David STEVENS, Sworn

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No evidence was called on behalf of the defendant STONE

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2nd October 2001

SUMMING-UP

MR. JUSTICE POOLE: Members of the jury, wouldn't you think that in broad daylight in midsummer and in the "Garden of England," as the County of Kent is known, a mother and her two young daughters could make their way in safety, across the fields a mile or two from school to home? Lin Russell, Josie and Megan, as we know, on 9th July 1996, were not permitted to. Instead, they were brutally bound and attacked; in the case of two of them deprived of life and, in Josie's case you may conclude, left for dead. It is difficult to picture a crime that could arouse stronger feelings of revulsion or pity than this one must, indeed than it already has, but, members of the jury, at the very outset, I have to direct you, as a jury, that feelings, including the feeling that somebody must be made to pay, are something that in your role as jurors you cannot for a moment indulge or entertain and that in your consideration of the evidence in the light of my directions of law, you must put them entirely to one side, because this case, as you will fully understand, stands or falls not on the feelings that it provokes, but on the evidence and on the facts as you find them to be and on nothing else. I say that at the outset because I want you to bear it in mind throughout my directions and throughout your deliberations that will follow.

A

I shall not be sending you out today. I shall complete the greater part of my summing-up today and finish it tomorrow before asking you to retire to consider your verdicts and we shall have an ample break mid-morning and mid-afternoon and at any time that any one of you asks me for one.

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C

I shall start with my directions of law and then remind you of the evidence under a number of different headings and, finally, shall summarise the arguments of counsel.

D

I start with the law, members of the jury, and I start with the matter of our functions, yours and mine. Our functions in the trial have been, and they remain, quite different from each other's. Throughout the trial, the law is my area of responsibility and I now must give you directions on the law that applies and when I do that, you must accept those directions and follow them. I must also remind you of the prominent features of the evidence. However, it is your responsibility to judge the evidence and to decide all the relevant facts and when you come to consider your verdicts, you and you alone do that.

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Furthermore, I shall not be repeating all of the evidence; of course not. Parts I shall refer to, parts summarise and a very few parts quote, but you consider all of the evidence

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A that you find to be relevant.

B You do not have to consider every point that has been
C raised, only such matters as will enable you to say, putting
all feelings to one side, whether the charges laid against
the defendant have been proved. You do that by having
regard to the whole of the evidence - including the agreed
or admitted evidence, much of which is in writing before you
and to which I shall be referring - and by forming your own
judgment about the witnesses and which evidence is reliable
and which not.

D You must decide the case only on the evidence that has been
placed before you. There will not be any more. You are
entitled to draw inferences, that is to say come to common
sense conclusions based on the evidence that you accept, but
E you may not speculate about what evidence there might have
been, nor allow yourselves to be drawn into speculation. So
the facts of the case are your responsibility. You will
F wish to take account of the arguments in the speeches that
you heard from leading counsel, but you are not bound to
accept them. Equally, if in the course of my review of the
evidence, I appear to express any views concerning the facts
G or to emphasise a particular aspect of the evidence, do not
adopt those views unless you agree with them and if I do not
mention something which you think is important, have regard

A to it and give it such weight as you think fit. When it comes to the facts of the case, it is your judgment alone that counts. Truly this is trial by jury.

B The burden and standard of proof, members of the jury. In
C this case, as in every criminal case, the prosecution must
D prove that the defendant is guilty. He does not have to
prove his innocence. In a criminal trial, the burden of
proving a defendant's guilt is always on the prosecution and
never passes to the defendant. How does the prosecution
succeed in proving a defendant's guilt? By making you sure
of it. Nothing less than that will do. If, after
considering all the evidence, you are sure that the
defendant is guilty, you must return a verdict or verdicts
of "Guilty." If you are not sure, your verdicts must be
"Not guilty."

E There are three counts or charges, are there not, on the
indictment, members of the jury? You must consider the case
F against and for the defendant on each count separately.
That is a direction which is always required when there is
more than one count on an indictment, but on the particular
G facts of this case, nobody is suggesting otherwise than that
all three verdicts should be the same, that is either all
three "Guilty" or all three "Not guilty," because the issue
is precisely the same in all three counts.

A I turn then, members of the jury, to the indictment, the
list of charges. Do you have a copy of this document? It
is before you, is it, members of the jury? It is a
B straightforward document as you can see in three counts:
two of murder and one of attempted murder, of Lin, of Megan
and of Josie respectively.

C A man is guilty of murder if, by his unlawful act, he kills
another, intending either to kill or to cause grievous
bodily harm, that is to say some really serious physical
injury. So in order to convict the defendant of murder, you
D must be sure that he caused the deaths of Lin and of Megan
respectively, that he did so unlawfully, that is to say
otherwise than in self-defence, and that he did so with an
intent either to kill or to cause some really serious
E physical injury. Nobody has suggested, whoever killed Lin
and Megan, that any of the ingredients of murder did not
accompany the crime, but those are the ingredients that you,
F the jury, must be sure about. Is that clear, members of the
jury?

G I turn to the third count. A man is guilty of attempted
murder if, by his unlawful act - that is to say otherwise
than in self-defence - he attempts to kill another intending
to kill. Here, an intent merely to cause grievous bodily

A harm would not suffice. So before you can convict the
defendant of attempted murder, you must be sure: first,
that he intended to kill Josie, and, (b) that with that
intention, he did something that was more than mere
B preparation for committing that offence. Again, members of
the jury, whoever attacked Josie with the hammer, nobody has
suggested that any of the ingredients of attempted murder
did not accompany the crime, but those are the ingredients
C that you must be sure about. As a formality, I should
direct you that if you were sure of the ingredients of
Counts 1 and 2, all of those ingredients, except for an
intent to kill or cause grievous bodily harm, the proper
D verdicts on Counts 1 and 2 would then be "Not guilty of
murder but guilty of manslaughter," but nobody has suggested
that that would be a realistic outcome on the facts of this
case. The central issue in the case you may think, what the
E case is all about, is not whether the ingredients of murder
and attempted murder have been made out - no-one has
suggested otherwise - but whether they have been made out
against the defendant, that is to say whether the man who
F wielded the hammer in Cherry Garden Lane was the defendant.
If you are not sure that he was, it is your duty to acquit.
If you are sure that he was, it is your duty to convict.

G Circumstantial evidence, members of the jury. Some
reference has been made to the type of evidence that you

A have received in the case. Sometimes a jury is asked to
find some fact proved by direct evidence: for example, if
there is reliable evidence from a witness who actually saw a
defendant commit a crime, if, for example, there is a video
B recording of the incident which plainly demonstrates guilt,
or, if there is reliable evidence of the defendant himself
having admitted it, as the Crown submits here. These would
all be good examples of direct evidence against him. On the
C other hand, it is often the case that the prosecution also
relies upon elements of circumstantial evidence to prove
guilt. That simply means that the prosecution is relying
upon evidence of various circumstances relating to the crime
D and the defendant which they say, when taken altogether,
will lead to or assist the sure conclusion that it was the
defendant who committed the crime. It is not necessary for
the evidence to prove an answer to all the questions raised
E in the case. You may think it would be an unusual case
indeed in which a jury could say, "We now know everything
there is to know about the case." So the evidence must lead
you to the sure conclusion that the charges which the
F defendant faces are proved against him. Circumstantial
evidence can be powerful evidence, but it is important that
you examine it with care and consider whether the evidence
G upon which the prosecution relies in proof of its case is
reliable and whether it does prove guilt. Furthermore,
before convicting in reliance or partial reliance on

A circumstantial evidence, you should consider whether it
reveals any other circumstances which are or may be of
sufficient reliability and strength to weaken or destroy the
prosecution case. Finally, you should be careful to
B distinguish between arriving at conclusions based on
reliable circumstantial evidence and mere speculation.
Speculating in a case amounts to no more than guessing and
making up theories without good evidence to support them and
C neither the prosecution, nor the defence, nor you, should do
that. Furthermore, and I stress this, whatever your
thoughts on circumstantial evidence here - for example, the
bootlace tourniquet, the blood said by Sheree Batt to have
D been on the defendant's T-shirt, the defendant's close
acquaintance with this area of Kent - those matters cannot
on their own suffice to ground a conviction. For that, you
E need the evidence of Damien Daley as to which you must be
sure.

F The defendant's character. You have heard that the
defendant's character is one that could be said to be bad in
the sense that he has been an abuser of drugs. The only
reason that you have heard that is because a tourniquet was
left near the scene and there is undisputed evidence that
G the defendant was a man, like others no doubt, who used
tourniquets in the course of his abuse of drugs, including
knotted laces and that is a factor for you to consider in

A the evidence, a factor, as the Crown puts it, of
consistency. But the mere fact that he was, at the material
time, a drugs abuser is not relevant to the likelihood of
B his committing these offences and must not be considered by
you in that context at all. I am sure that is clear,
members of the jury.

C Confession evidence. This case stands or falls on the
confession attested to by Damien Daley. The defendant's
case is that he did not make this confession, that it has
been fabricated. In deciding whether you can safely rely on
D the confession, you must decide two issues. First, did the
defendant, in fact, make the confession? If you are not
sure that he did, you should ignore it. If you are sure
that he did make the confession, then consider the second
E question: are you sure that the confession is true? When
deciding that, you should have regard to all the
circumstances in which it came to be made and consider
whether there were any circumstances which might cast doubt
F on its reliability. It is for you to assess what weight
should be given to the confession. If you are not sure, for
whatever reason, that the confession is true, you must
disregard it. If, on the other hand, you are sure that it
G is true, then you may, of course, rely upon it.

Lies. It is variously alleged and admitted that the

A defendant lied to the police about a number of matters and
you are entitled to consider whether this supports the case
against him. The lies that are pointed to by the
prosecution are these: first, his pretended ignorance of
B the area in question, second, his claim not to carry a
hammer with him on his motoring expeditions, third, the
frequency or infrequency of his use of a bootlace
C tourniquet, fourth, his denial of having any hooded tops,
fifth, if you accept Sheree Batt's evidence about the
bloodied T-shirt, his denial of wearing such a shirt at or
about that time and, sixth, his lie in interview that he was
D telling the truth. How do you approach this question of
lies? If you are not sure that a lie or lies were told at
all, of course you ignore them altogether. If, on the other
hand, you are sure that these were lies and that the
defendant told them, you must ask yourselves this question:
E why did the defendant lie? The mere fact that a defendant
tells a lie is not in itself evidence of guilt. A defendant
may lie for many reasons and they may possibly be innocent
ones in the sense that they do not denote guilt; for
F example, lies to bolster a true defence or lies told in
panic or confusion or out of sheer foolishness. In this
case, the explanation for the lies is that of the childish
G response - not uncommon in adults, too, it is submitted - of
a man facing very serious trouble, including in this case no
less than the allegation of murder with a hammer and wishing

A to distance himself as far as possible from that
accusation. If you think that there is or may be an
innocent explanation for his lies, then you should take no
notice of them, but if you are sure that he did lie and that
B he did not lie for an innocent reason, then while his lies
alone could never prove guilt, they can be regarded by you
as evidence going to support the prosecution case.

C Identification. There has been no evidence of
identification in this case. Neither Josie nor Miss
Burchell identified the defendant. Miss Burchell said that
the defendant looked "very familiar." She said she "didn't
D know why, there was just something about him," but that does
not amount to an identification. What is said is that he
resembles the description and the E-fit. It is for you, of
course, to decide if that is the case. No doubt there are
E other men, perhaps many others, who resemble both. I should
add this, members of the jury, that even where there has
been a positive identification, unlike here, juries are
still warned of the special need for caution before
F convicting a defendant on evidence of identification. That
is because it is possible for an honest witness to make a
mistaken identification and there have been wrongful
G convictions in the past because of such mistakes and juries
are therefore asked to consider very carefully the
circumstances in which even positive identifications have

A been made; for example, the distance, the light, whether the
witness had ever seen the defendant before, anything
interfering with the observation such as objects or movement
or glass, as well as the period that has elapsed between the
B observation and the identification to the police. Bear all
of those matters in mind.

C The defendant has not given evidence in this case. He does
not have to give evidence. He is entitled to sit in the
dock and require the prosecution to prove its case. You
must not assume he is guilty because he has not given
evidence. In this case, the fact that he has not given
D evidence proves nothing one way or the other. It does
nothing to establish guilt. It should not be held against
him and provides, by itself, no additional support for the
prosecution case. On the other hand, it does mean that
E there is no evidence from the defendant to undermine,
contradict or explain the evidence put before you by the
prosecution.

F The defendant's answers to the police in interview are part
of the evidence and you give them such weight as you think
right, bearing in mind that they were not given on oath and,
G therefore, not tested in cross-examination.

Both counsel have told you rightly that the outcome of the

A case rests on the evidence of Daley. The other evidence, described variously as "circumstantial" or as "evidence of consistency," cannot on its own suffice for a conviction.

B You assess the witnesses, all of them, including what you know of their background. Daley's background, to use his own word, is that of a "crook" and you should, of course, examine his evidence with great care. It is right to say that a bad background does not mean that a witness cannot be
C telling the truth, any more than a good background guarantees that a witness is telling it. It is for you to decide and your decision will depend upon your detailed examination of the evidence.

D Josie. You decide on the weight to attach to her evidence. She has undergone extreme physical and emotional trauma and was only 9 years' of age at the material time. Nonetheless,
E you may think she has had some recollections, albeit very far from complete, on which you may think you can rely -- it is a matter for you.

F I now turn, members of the jury, to the evidence in the case and as I indicated to you, it comes under a number of different headings and I shall try to give you those
G headings as I begin each phase of my summary.

H The first part of the evidence you may recall dealt with the

A Russell family background and the sightings of Lin, Josie
and Megan before the killings. As background -- and I am
taking this, members of the jury, from page 1 of the
B Admitted Facts and I shall be referring in some detail in
the course of my summary of the evidence to these written
facts. I will try to refer you to the document each time I
do that. I shall edit some of the text as I go through it,
members of the jury.

C
D Dr. Lin Russell was born in 1951. She was a highly
qualified geologist, an independent and confident woman.
She met her husband, Dr. Shaun Russell, in about 1973. They
married in this country in 1975, but spent most of the next
16 years, until 1991, abroad.

E Josie was born on 28th March 1987 and Megan, on 15th August
1989. After the birth of the children, Lin concentrated on
looking after the family.

F In 1991, the family returned to the United Kingdom and took
up residence in a house they bought in north Wales.

G In April 1994, Shaun Russell obtained employment as a
lecturer at the University of Kent & Canterbury and in the
late summer of '95, they all moved into Granary Cottage,
Nonington in Kent.

A

Josie and Megan attended their local primary school at Goodnestone from September 1995.

B

When Lin, Josie and Megan were attacked on the Tuesday, 9th July 1997, their ages were, Lin, 45, Josie, 9 and Megan, 6.

C

Dr. Shaun Russell's evidence was that during the spring and summer of 1996, Lin would cycle with the girls to school, leaving their bikes there and then cycle home. Occasionally she would walk. Since they had become a one-car family,

D

more often than not, Dr. Russell said, she would walk to collect them and then walk back home with them, as he would have taken them in in the morning and all of that began about early June of 1996. "She would always walk the same

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route on return with the children, leaving school at about 3.45." Members of the jury, you are familiar with that route from the plans, the maps and the photographs that you have got and in the course of my summing-up, in general I am not going to ask you to take those documents out. Of

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course, when you retire tomorrow to consider your verdicts, you will take them with you, but you are not only familiar with the scene, you have been to the scene and I do not

G

intend, generally, to be asking you to take out documents in confirmation of what I am now saying. You will have a very clear picture in your mind of the landscape. "More often

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A than not," he said, "Lin would take Lucy," who was the
family dog, "when she went to collect the girls. Lucy," he
B said, "was a friendly but protective dog, who would bark at
transgressors or interlopers with a very aggressive little
bark, a very piercing one and she would run up and then stop
at anybody, giving a burst of barking."

C On 9th September 1996, he said he went to work at the
University of Canterbury in the morning. He left the
university at about 7 o'clock in the evening and arrived
home at 7.30 and was then surprised to find that the house
was locked up and that the other dog, the Golden Retriever,
D was asleep in the kitchen with no sign of either Lucy or the
family. His first thought was that the family were visiting
the pony in a field nearby and not expecting him home for
another hour or so, so he decided to get on with cooking
E supper while they were out. During that period, he received
a telephone call from Mrs. Gregson saying that she had
called for Josie at 5 o'clock to take her to Brownies, but
had found the house, as indeed he had, locked and with
F no-one at home. Mr. Gregson came on the line and asked Dr.
Russell to call as soon as the family arrived. He put the
phone down and immediately ran along the end of the track
G that leads from the front door of Granary Cottage to the
main Nonington College buildings in front of which the
ponies grazed, but he could not see Lin or the girls there.

A Later, he rang the Gregsons again, now clearly worried, and they all discussed ways of trying to trace the family.

B Members of the jury, I summarise now. He then described the increasingly anxious and no doubt distraught time until just after midnight when the news was brought to him of the finding of the bodies and that was the evidence that he was able to give, members of the jury.

C Patricia Groves gave evidence. She was the lady who lived at Mt. Ephraim house - you know the house in question - near the scene. This was a lady who was a widow and who lived alone there. She knew Lin Russell, though did not know her terribly well, and she knew that they used to use the lane, D Lin and the two children, and on a number of occasions, she, Mrs. Groves, had met Lin Russell there and had passed the time of day with her. On that particular day, 9th July, E Mrs. Groves had left home at about midday or half-past-midday to go shopping in Canterbury. She remained there most of the afternoon and, indeed, did not get home F until about quarter-to-seven in the evening.

G Pauline Radage is another lady who lives in Nonington and she was able to tell you that she had seen Lin Russell in Nonington with Lucy, the dog, at about quarter-past-three that afternoon and Lin Russell told her that she was H hurrying to pick up the girls. That was obviously a

A sighting of Mrs. Russell on her way, just beginning to make her way towards Goodnestone and the school.

B Deborah Brown was a lady who took Josie and Megan to the swimming gala in Canterbury that afternoon and then, after the gala, brought them back to the school where they arrived between about ten-to-four and 4 o'clock. Megan and Josie went in to collect their lunchboxes and were met by their mother.

C
D Gillian Austin went to the school - she is another of the mothers of the school - and went there at quarter-to-four in the afternoon to collect her son and there she saw Lin Russell with the dog. Shortly after that, the girls arrived and collected their lunchboxes. "They had string bags with them with their swimming gear in the bags and Lin put the lunchboxes in the bags and she," Lin, "then carried both of those bags, accompanied by the girls, towards the footpath to Nonington." It is perhaps worth picturing and remembering that, members of the jury. As they leave the school, Lin is carrying all the baggage, both bags with the swimming costumes and towels in and with the lunchbox, lunch bag I should say, themselves containing the box in each case, stuffed into those bags. So the mother was carrying it all and the girls are not having to carry anything.

A They were also seen about this time by a Mr. Blake who saw them moving off from Goodnestone and towards the field.

B Some minutes later, they were seen again by a Mrs. Nichola Phillips near the metal five-bar gate that you will all remember. Mrs. Nicholas (sic) was driving along the road past the five-bar gate, happened to look to her right and saw Lin and the two girls walking towards the gate from the direction of the school and in the direction of home.

C
D The next sighting, members of the jury, you may think, was that of Laura Craven. She told you that she lived in Eastry at this time and used to work at Canterbury and that, on her way home, would drive in the Chillenden direction. That afternoon, she left Canterbury about 4 o'clock, so she would turn into Station Road about twelve to fifteen-minutes-past-four. Station Road, as you will well recall, is the road that leads towards the track, Cherry Garden Lane, which, of course, is the track that turns right off Station Road. As she passed the track, driving along Station Road towards Chillenden, she glanced down the track and saw an adult there, in green or brown clothing, together with two small figures in red. She said it was very unusual to see anybody there. She said that she also saw a car further down towards Chillenden, pulled over on Station Road with nobody in it, but she immediately said: "It may not have been on

A that particular day that I saw that car." She did not have
any clear picture of its colour; it might have been dark
orange, a brick colour or it may have been green and she is
not sure it was on that day anyway. Of the figure that she
B saw on the track, she said: "I couldn't tell the sex of the
adult." She said that: "In my first statement about it, I
mentioned the adult, but when I thought about it afterwards,
C I realised that I'd also seen something red. In the first
statement, I said that I thought that the adult was a man
because it was an adult taller than me. I have, and still
have, no idea what the Russell children were wearing on that
day, but what I saw was somebody in cherry red." She agreed
D that it was only in her second statement to the police that
she mentioned the vehicle. That was a vehicle that she had
seen on the road, Station Road, after passing the beginning
of Cherry Garden Lane and before getting to Chillenden and
E she had seen it about half-a-mile from Cherry Garden Lane.
She said that she was absolutely convinced, on reflecting
about the matter, that she did see the two girls, or the two
figures in red, as well as the adult, but is not sure that
F she saw the car on that date.

Josie, members of the jury. Josie's evidence, again,
G members of the jury, was touched upon in the Admissions and
I am going to ask you to turn to page 10 of the Admissions,
Admissions 4.6 to 4.9.

A

On 2nd September, this is less than two months after the attack, Josie and her father were watching a television programme which made reference to the attack and she indicated to him that she had some recollection of what had occurred and so Dr. Russell told the police. The head injuries that Josie had sustained caused her to have significant expressive language difficulties and, to a much lesser degree, her understanding of language was also affected.

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C

D

On 3rd September, a speech and language therapist began a series of sessions with Josie designed to assist her nonverbal communication, which encouraged her use of nonverbal aids such as models and scrapbooks, pictures and drawings. That speech therapist was also later involved in the various videotaped interviews conducted by the police.

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F

On Monday, 9th September 1996, Josie pointed out to her father the copy of the E-fit included in the Sun newspaper of that date and that E-fit, printed in the Sun on that date, had been prepared on the instruction of the witness, Nichola Burchell.

G

Josie was interviewed by the police on many occasions from 8th September 1996 onwards. The officers who interviewed

H

A her were Detective Constables Pauline Smith and Ed Tingley
and the interviews were all video recorded. A summary,
together with the video extracts played in evidence, are
accepted by both parties as Josie's evidence in the case.

B She was to say, members of the jury, that she had been
trying her hardest to remember what had happened and that
she understood the importance of telling the truth and that
when she could remember things, she should say so and vice
C versa.

D We will come to Josie's evidence in just a moment, but I
interpose very briefly the evidence of Detective Constable
Tingley through whom, if you like, it was given. He told
you that he was one of the two officers who conducted the
interviews. First of all, they were conducted at Granary
E Cottage, her home. There was then a break for about four
months and then further interviews from May of 1997, Josie
having partly recovered her powers of speech. In all, there
were well over 20 hours of text.

F The first interview, he told you, was uncontentious, to see
how much she understood, using the blue scrapbook that you
saw and he was satisfied in that interview that Josie could
G understand the questions that were being asked.

H In the interview on 12th September 1996, with reference to

A the scrapbook, Josie indicated that she remembered going to
the school swimming gala in Canterbury on the day of the
attack and that Megan had swum there, too. She chose a bus
as the way they got to the gala, chose the backstroke as her
B swimming stroke and a white towel as one "like the one" that
she had used. She chose a car as the means that she had got
back to the school and she indicated that her mother had
come with Lucy, the dog, to pick them up from school and
C that they had then walked home. The route that they took
she indicated in a series of photographs as across the field
and up to the stile and then to and through the five-bar
gate which they had to open and then onto the road. She
D then indicated that after going along the road, they
eventually took the right-hand fork into Cherry Garden Lane
towards what is called Nooketts Wood. A model was then
produced - the model that you can still see, members of the
E jury, of the scene - and Josie indicated on it the route,
running her finger down Cherry Garden Lane. She was then
introduced to the model figures, the little dolls,
F representing Lin, Josie, Megan and Lucy, the dog.

In a later interview, she was asked about what had happened
in Cherry Garden Lane. She indicated that a car had come
G along the lane, a saloon car. She was unable to identify
its colour, but she picked up a red car. She indicated that
she had never seen the car before and that she had waved at

A the car as it went past, but the man did not wave back or
speak, there was one man in the car and there came a time,
she indicated, when they saw the car again, stopped across
their path. She indicated with a series of ticks that the
B man had yellow hair, was of medium build, "as tall as
daddy," blue jeans, with a top that had long sleeves and a
collar but no tie. She then pointed to a T-shirt that was
blue. She could not say anything or indicate anything about
C shoes. Then she indicated a pair of brown trousers. She
could not indicate whether he was wearing a watch or rings.
She indicated that his hair was short and that he had no
D beard. Asked if he had tattoos, she shook her head. No
glasses. She indicated that Lin had said, "Ow" at one stage
and that the man had hurt her, that is to say Josie's,
head. She put a tick against a hammer in that context. She
E indicated that she did not know if he had hit her mother,
Megan or Lucy and that he had tied her, that is to say
Josie's, hands behind her back with a shoelace, that he had
taken them into the woods and had tied her, Josie, first
F with a lace, then she had seen him tie her mummy with a blue
towel. He tore it. Lucy did not bark. She indicated that
Lucy "panted." She then indicated that she, Josie, ran
G towards the house, that the man ran after her, he hit her on
the head and walked her back. She did not see the car
leave.

A In a further interview on 17th September, she picked up a
red model of car. There were only five available you may
remember. She indicated again that the car had passed them
B on the lane, that she did not know the man, had never seen
him before. Asked if she could remember the colour of the
car, she could not remember. She put the models of Lin,
Megan and Josie inside the wood and indicated that the man
had brought the hammer from the back of the car. She
C indicated that she had run and that the man had then hit her
with the hammer and had put her mother and herself, Josie
and Megan in the wood. She had then indicated -- she then
indicated a tearing of the towels and did a demonstration
D with pieces of paper you will remember, members of the jury,
and demonstrated her mother's hands being tied behind her
back. She indicated blindfolding inside the woods of both
Lin and herself, Josie. She pointed to the models carrying
E the lunch bags and put the man by the car, getting his
hammer from the car. She indicated herself running and him
chasing and bringing her back and she also indicated the man
F hitting Lin with the hammer.

G There was a further interview on 23rd September 1996 in
which she indicated that he had tied her and Lin to a tree,
but not Megan. Lin had taken a shoelace from her shoe and
the man had tied her up with it. Told about the swimming
costume that was found up the track, she indicated that she

A thought it had just fallen out of the swimming bag as they walked down the lane. Well, think about that, members of the jury. It is unlikely you may think -- though it is a matter entirely for you -- that she actually saw it fall.

B What would her reaction have been if she had actually seen Megan's swimming costume fall from the bag onto the track? You can picture it perhaps, members of the jury. Presumably she would herself have picked it up or have said "Mummy, C look, Megan's costume's just fallen out on the track." So you may think, members of the jury - though it is a matter entirely for you - that in saying that she thought it had D fallen out of the swimming bag, on being told that that is where it had been found, it was a surmise rather than an observation. She was pointed to the black shoelace or a picture of it; she said that that wasn't hers or Lin's or E Megan's. She, Josie, she said, was tied to a tree with tights around her waist, the man had told her to take them off and the man had also taken her shoes off after she had run off.

F On 1st October, in an interview, she was shown a drawing of her jelly shoes and said that the man had taken them off and thrown them to one side after she had run off.

G On 17th November, in another interview, a police artist prepared a sketch of her recollection, that is Josie's

A recollection, of the attacker and you have a copy of that sketch in your bundle, members of the jury. At that point, she said that she thought she could remember the man and could pick him out.

B On 18th November, still 1996, she was taken to a car lot somewhere and was asked to look at a number of real cars, not models this time. She said, again, that she could not remember the colour of the car.

C
D Interviewed on 9th January 1997, she said that she ran at a time when the man already had a hammer and that there was only one man there, tying everybody up and hitting with his hammer and looking through the lunchboxes. She said that the Burchell E-fit was the man. Members of the jury, that does not constitute identification evidence. I have already given you a direction on that.

E
F On 9th January 1997, and, again, later on 1st May 1997, there were further interviews, there having been a long gap between January and May. Asked again in May, she said that the car went past them. Again, she said that she could not remember its colour, there was only one man in the car and the car parked ahead of them across the track. The man said to them, "'Give me your money.'" This is now in May of 1997. By this time, as you remember, Josie is capable of

A significant speech that she had been incapable of the previous September and October and November. "He said,

'Give me your money.' Lin said, 'I've got no money.

Shall I go back to the house and get some money?' and he

said, 'No.'" Lin had told her, Josie, to run to Mt. Ephraim

and tell the person there. "I ran and he ran and hit me

with the hammer and I said, 'Okay, okay, okay.' Then he

tied me and said, 'I'm only tying you up. Then I'll drive

away.' He tied me with tights. I saw him hit Lin first. I

heard her say, 'Ow.' I didn't hear Megan. I didn't see him

do anything else to mummy. I don't know if he hit me when I

was tied to a tree; probably." She did not know what

happened to Lucy. The man had "short spiky hair" and was

"about 20 or 25 or 30" with "light brown hair."

Interviewed again on 10th May 1997, she said yet again that

she could not say what the colour of the car was and she

repeated that Lin had told her to run away towards Mt.

Ephraim to get the person there. She said that she saw the

man look in the lunchboxes. She did not see anything happen

to Lucy. All three of them were lying close together. She

heard him hit Lin and she, Josie, said "Don't" and got free

because the ties were loose. "He had a hammer with him. He

took it out of the car as soon as he got out of it. He

wasn't cross, just normal." She said that when she had seen

the picture in her father's paper, she knew it was the man.

A

Further interviewed on 21st June, asked the colour of his hair, she held up a yellow felt tip pen. Asked if she would know the man again, this time she shook her head. She thought the man was taller than Lin, maybe as tall as DC Tingley. He is 6ft.5, members of the jury. Maybe as tall as her father, who is 5ft.11 and three-quarters.

B

C

On 15th November, when asked about the identification parade on which she had not indicated anybody, she said that she "couldn't really remember the man now."

D

As you know, members of the jury, on 20th September 1997, she viewed a parade on which the defendant stood and made no identification and, on 13th December that same year, saw a video tape of the same parade and made no identification.

E

At one stage, she agreed that the man's hair was of a similar colour to that of Lucy Gregson and it was agreed that Lucy Gregson had fair hair, light brown to blond.

F

That concluded, members of the jury, the evidence of Josie and you place upon it such reliance as you think to be proper.

G

Members of the jury, I am going to come now to the sightings of the killer, as you may think him to be, by various

H

witnesses after the event and at 11.30 approximately, I am going to give you a good break.

The first of the sightings, members of the jury, was by a young lady called Nichola Burchell. It is for you, of course, to decide in each of these sightings whether the person who was seen by the witness was in fact the killer, but, at all events, her evidence was this, that in summer of 1996, she was living in Aylesham - that is a village only a mile or two from this scene - and was working as a potter in another village called Summerfield. On her way home, she would drive along Buckland Lane towards Aylesham. That, of course, would take her straight past the T-junction with Station Road. Within a week of the murders, she was stopped by the police and asked if she had been in the area at the material time and she made her statement about it on 16th July. What she said was this, that that day, Tuesday, 9th July, she had been at work. She normally left at 5 o'clock in the afternoon, but left rather earlier that day at about twenty-five-to-five and drove towards Aylesham. She was doing 45 to 50 miles per hour. Obviously this is a young lady who likes to drive quite briskly, members of the jury. She said it took about eight minutes from her place of work to the junction of Buckland Lane and Station Road. So when she got to that junction, members of the jury, it would be just before quarter-to-five, 4.43. "As I approached the

A junction, I was doing about 45 mph and I saw a car at the
junction. It started to move off. It would be in second
gear, just. I had to go down a few gears and I ended up
nearly bumper-to-bumper with him. The driver of the car
B kept looking in his wing mirror at me and that carried on
until I turned off." Well, you remember the turn-off,
members of the jury. You remember the T-junction between
C Buckland Lane and Station Road. You go down Buckland Lane,
do you not, then there is a right turn, is there not, then a
little bit further along the road there is another
T-junction to the left where Miss Burchell turned off. You
D remember that bit of road. What is it, members of the
jury: half-a-mile or three-quarters of a mile in all? You
are the best judges of it. You have actually been there.
"He was the only occupant of the car," she said. "There
E was an oblong headrest that you can see through. He had a
driver's mirror, but he always looked at me in the wing
mirror by his window. He started to speed up and I followed
straight behind him and I got up to about 35 miles per
F hour. I was only a metre behind him, if that, and he
appeared to be looking at me; quick looks to see where I
was, quite angrily. There was a man on a cycle near the
right-hand bend going the same way as us and we both
G overtook him and as we turned right, I got a quick side view
of the driver of the car in front of me as he went round the
bend." One of you asked a question about whether the window

A was open. The answer came back, "Yes, it was half open."
B "We were nearly bumper-to-bumper again. I didn't indicate
my turn off to the left. He was still looking at me when I
did turn off. I was about one car length behind him when I
turned off. I thought he was an idiot," she added. "What I
could see when I was behind him was the back of his head and
the top of his shoulders. I could see his face in the
C mirror and his arm on the steering wheel. The next day, I
helped the police with an E-fit. I did two, one black and
white and one coloured. I thought the coloured one was
really good, 90% accurate." You have got both, members of
the jury. "I'd put his age at 30 to 35. Hair: short,
D colour: gingery blond. Complexion: fair. He was reddy,
sweating, as if he'd been running. Clean-shaven. Quite
stocky with a bright red T-shirt. On 20th September, 1997,
E I went on an identification parade at Rainham." This is now
14 months later, is it not, members of the jury? "I walked
up and down the parade. After viewing it, I said, 'I'm not
sure,' so the officer said, 'So you can't make a positive
F identification?' I said, 'No.' He said, 'Can you make any
form of identification?' I said, 'No. 7 looks very
familiar. I don't know why. There is just something about
him.' By 'familiar' I meant that it might be someone that
G you think you've seen before but you don't know where or
someone who looks like someone else you already know." The
person standing at no. 7, members of the jury, was the

A defendant. She said, "I'm not good at car makes. The
 colour was light beige. It was an old car, rusty, a
 four-door saloon, like an old Escort, covered in field
 dust. I thought it was a B-reg, about ten years' old.

B There was a static strip on it and mud flaps. I'm not sure
 if it had an old 'GB' sticker. It was really muddy under
 the wheels, rusty around the boot and underneath."

C Cross-examined, she said the car had emerged from the
 junction but she had not actually seen it emerge, but from
 its position, it must have done. She could see his bare
 right arm. Doing the best she could, there were no tattoos
D that she could see. "His hair was fashionable; very short,
 gelled, flicked up, cropped up hair. I wasn't sure, but the
 man at no. 7 in the identification parade might have
 reminded me of someone I already knew. The car was beige,
E butterscotch. The headrest was oblong with a hole. The car
 had a boot. On the boot, there was a black spoiler, the
 full width of the car, which looked as if it had been fitted
 on afterwards. The car had black mud flaps and a red static
F strip. I'm nearly 100% sure that there was a 'GB' sticker
 on the boot."

G In re-examination, she said, "It was like I'd seen him,"
 that is no. 7, "before somewhere. He stuck out more than
 anyone else. I don't know why; it was just a feeling I'd

A seen him somewhere before. His nose was wide and broad
across his face."

B I will sum up now, members of the jury, the evidence of
Anthony Rayfield and then you can have your break.

C Anthony Rayfield was the gentleman who was living in Rowling
Cottages in the summer of that year and was a jobbing
D gardener and he would walk home from work across fields to
the cottages where he lived. On Tuesday, 9th July, he
finished work at about 5 o'clock and he had reached the
track across the first field in five minutes and it would
E take five to ten minutes to cross that first field. As he
approached the hedge between the two fields, he saw
something near the tree that is just beyond Rowling
Cottages. You know the tree that is being discussed here,
F members of the jury, because you have been to it. "This
would be about ten minutes after I left work," so we are
talking about ten-minutes-past-five. "The car was a little
further up from the tree in a lay-by just up from it." A
"lay-by" is rather -- I was going to use the word "pompous"
- I do not know what the right word is, members of the jury
- perhaps rather an ambitious description of it. It was a
G slight widening in the road. "It was a car, stationary. I
could probably see its top half at this stage. It was
facing away from the tree, uphill. The boot or the hatch

A was open. I carried on towards home into the second field
and crossing that field, I noticed somebody standing near
the car. I was about halfway across the field and I'd be
100 to 150 yards from the car. The man was jittering
B about. He was at the back of the car on the driver's side.
He walked up the bank and looked across the field towards
Chillenden. The bank is on the tree side of the road. I
think he walked up it backwards. He was looking around all
C over the place, not standing still. I wasn't watching all
the time. I just kept looking up. I don't think I saw him
come back down the bank. As I got near the hedge, I saw him
coming down the road towards where I was. I wondered what
D he was up to and he jogged down to where the tree is and I
then saw him go back towards the car. "The closest we were
was from the corner," that is where he emerges from the
field, "to the tree. As I came out on the road, I could see
E the back of the car. I thought it was an Escort, beige. I
didn't know the year. I didn't know the condition. He was
a white man, about 40, about 5ft.6, medium, wiry build with
F light coloured hair, quite short, close cut. I don't
remember his clothing. I don't remember anything else. I
was curious as to what the man had been doing. Later, I
went with my dog to the area of the tree" which you saw in
G the photographs in your bundle, members of the jury, "and I
saw the items that you can see in the photographs," that is
the string bag and strips of towel. "I left the items in

A the same area where I'd found them and told the police. A
dog started pulling me towards the bag. The blue towelling
was in the string bag near the top of the bank. It was
B pushed into the hedge. I pulled it out and dropped it where
it was. I didn't have a clue what had happened. The next
morning, I heard about the murders, so I contacted the
C police after I'd been to have another look with a girl who
said it looked like blood."

In cross-examination, he said he made his statement the next
day and that in that statement, he said that the car
D appeared "clean, newish looking" and reminded him of an
Escort, though he was not certain. Members of the jury,
that was his evidence.

I am going to give you a break. 15 or 20 minutes,
members of the jury.

(In the absence of the jury)

MR. JUSTICE POOLE: Mr. Clegg, just a brief matter on the
question of the tourniquet.

MR. CLEGG: Yes.

MR. JUSTICE POOLE: In the event - and here I am paying
particular regard to your submissions to the jury - it was
not in dispute that the bootlace at the scene was a
G tourniquet. You addressed the jury on the footing that it
was.

MR. CLEGG: My Lord is absolutely right.

A MR. JUSTICE POOLE: Therefore, subject to anything that you may
say, I am not proposing to remind the jury at any length of
the evidence of Mr. Ide and the other expert. Was it Mr.
Smith or Mr. Davies?

B MR. CLEGG: Mr. Smith.

MR. JUSTICE POOLE: Mr. Smith. I am proposing, in very short
order, to deal or dispose of their evidence because it is no
longer an issue in the case.

C MR. CLEGG: My Lord, I agree, save to one matter. Mr. Smith's
evidence is relied upon by the defence insofar as he said
that the lace was a particularly common type of tourniquet
used by intravenous drug users.

D MR. JUSTICE POOLE: I shall remind them of that.

MR. CLEGG: I am grateful, my Lord.

MR. JUSTICE POOLE: Thank you very much. I will rise.

(Short adjournment)

(In the presence of the jury)

E
MR. JUSTICE POOLE: Members of the jury, a slight revision to
the timetable. We will be rising earlier than usual this
afternoon, in fact at about 3 o'clock, for reasons I need
F not trouble you with. In return, I would be grateful if we
could have a shorter lunch hour than usual. We will have a
20-minute shorter lunch hour than usual and then you will
G have your reward, as it were, not in heaven, but earlier
than that; this afternoon, when we rise at 3 o'clock. All
right?

A I come to the evidence of Isobel Cole. She was a lady who
has a friend in Chillenden and on that day in 1996, she took
B that friend of hers, a lady called Beryl, to Canterbury - I
think they had some shopping to do there - and arrived back
with her in Chillenden about 4 o'clock. She spent a little
time with her and left her in order to go back home at about
C 4.30 and her route home took her past the windmill which
would be on her right on that road. Just before the
windmill, before she arrived at the little track that leads
D down to the windmill, she saw ahead of her a man standing on
the bank on the opposite side of the road from the windmill
and further up the road. "He was just stood there. He had
dark trousers on and something in his hand. It was a
hammer. He was standing still, looking down at the road.
E It was a claw hammer and the claw was facing me. The handle
was of wood. He was white. He looked sick, ill, to me.
Dark brown hair, dark eyebrows and dark trousers, a blue top
or jacket, like a jeans jacket, to the waist. I think he
F had a baseball-type cap and long sleeves. I'm not good at
ages, but I guess between late 20's and early 30's. He had
a T-shirt of some sort on. When I looked back in the
G mirror, he'd crossed the road and was on the windmill side,
still on the road, walking towards the windmill. He was
five or six yards past the track to the windmill. I didn't
see a parked vehicle," she said in cross-examination.

A Trevor Jackson gave evidence. He was a young man who lives
in Aylesham and he was out that afternoon looking for scrap
metal. Later on in the afternoon - this was to help you
B with the timing - he saw the programme, Home & Away, on the
television. It was already on when he got home and that is
a programme that is broadcast from ten-past-five to
C twenty-to-six. He had driven home past Chillenden and had
stopped at a farmyard dump. His route would take him from
Goodnestone towards Rowling Court, down the Sandwich Road
past Chillenden and then back to Aylesham and, en route, he
D stopped and went to the dump that is at Rowling Court. So
that is not far past the tree, members of the jury. He was
with a friend of his called Mr. Williams. When they went
towards Rowling Court, there was a car parked on the
left-hand side of the road, just before the corner at
E Rowling Court and facing up the road, a small car. "There
was a bloke stood on top of the bank. He was behind one of
the jaws" -- "one of the doors," forgive me, "which was ajar
and was looking across the field towards the windmill. I
F didn't see his bottom half and I can't give a description.
After that, I was at the dump for about ten minutes looking
for fertilizer bags and, later, we stopped at another dump
G at Nonington and we were there for about five minutes. Then
we went home where Home & Away was on. So I got home about
20 to 25 minutes after seeing the man. The ads were on,"

A the advertisements, "during Home & Away and they come on at
about twenty-five-past-five." So, members of the jury,
calculating back from that, it would be about 5 o'clock to
B five-past-five when he saw the man at the car near Rowling
Court, not very far in time you may think, members of the
jury, at all from where a man -- from when a man had been
seen by Anthony Rayfield. You may think that it is Mr.
C Jackson - it is a matter entirely for you - seeing the same
man in the same car in the same place at about the same time
as Mr. Rayfield. "On my way home from the dump at
D Nonington, I saw a man between Cuckolds Corner and Cherry
Garden Lane, walking up the right-hand side. That man was
wearing blue jeans and a light grey jogging top with its
hood up. He was a white man carrying something that wasn't
a bag in his left hand and walking pretty fast."

E Another sighting - it is a matter for you, members of the
jury - was reported by Ann Rotvik. After 4.30, near Rowling
Court, she saw a beige car, possibly an Escort, ten years'
F old, of square shape, with one man with it, a white male
with short fair hair, aged 30 to 40, of medium build. That
was about 4.50 she thought.

G Turn to the Admissions again, please, members of the jury,
on page 9, Admission 3.2. Here we have an Admission about
what was found near the tree at Rowling Court. "There were

A six separate strips of towel which, when fitted together,
formed one complete towel, identified by Shaun Russell as a
family towel. All six strips were bloodstained and the
B distribution of the blood suggested that at least some of
the blood was deposited after the towel had been torn into
strips. A number of the bloodstains from the towel were
grouped and analysed for DNA. None were inconsistent with
C Lin, Josie and Megan, but there was blood on the towel from
more than one person. Lin Russell's DNA was found on pieces
5 and 6. A number of hairs were recovered from the towel
which were consistent with having come from Lin, Josie or
D Megan. The string bag was heavily bloodstained. DNA
analysis showed that this was Lin Russell's blood. A number
of hairs were recovered from the bag which were consistent
with having come from Lin, Josie or Megan." That is a
E description, members of the jury, of what was found near the
tree at Rowling Court.

F I come to another element of the evidence now, members of
the jury: the search at Cherry Garden Lane by the police
when they had been alerted.

G Police Constable Crouch searched along Cherry Garden Lane
with a colleague shortly after midnight, using a torch. He
found a swimsuit on the track in the position that you saw
marked when you were on your visit to that track, that is to

A say 69.2 metres from the scene of crime itself, back in the
direction of the school. So that swimsuit, members of the
B jury, would be towards the right-hand side of the track as
you walk or drove from the scene of crime towards Station
Road. You saw the post, I think it was, and a placard of
some kind attached to it, marking the spot.

C Police Constable Fox said that after the swimming costume
was found, he was searching Cherry Garden Lane with a torch
and he it was who found the bodies in the copse. He
D retreated and then returned to check with others for signs
of life; there were none that he could detect. The area was
sealed off and he was not there when the doctor arrived.

E Police Constable Newsom also saw the swimming costume on the
path during the search. That was about midnight. It was
damp and smelt of chlorine.

F Dr. Parkes was summoned to the scene at half-past-one in the
morning. He checked for signs of life. Lin and Megan were
dead, but Josie was still alive and was taken to hospital.
G He calculated that the times of the deaths had been at least
eight hours before his examination at 1.30. That takes us
back to the time that you have been considering, does it
not, members of the jury? "Inevitably," he said, "there
would have been some disturbance of the scene caused by my

A presence there. Josie was lying at the feet of Lin."

B Members of the jury, we come to the next phase of the
evidence now, the postmortem, and, again, I refer you to the
Admitted Facts, page 2, Admissions 2.1 and following. "The
pathologist, Dr. Gibson, visited Cherry Garden Lane on 10th
July to view the bodies there and, later the same day,
carried out postmortem examinations on both Lin and Megan at
C the Kent & Canterbury Hospital.

D Lin was 5ft.3 tall, dressed in a brown T-shirt, light
coloured trousers, knickers, blue socks and white tennis
shoes. The right shoe had the lace missing. Her brown
T-shirt was heavily bloodstained, particularly to the upper
front and back. DNA analysis was done and the results were
E consistent with the blood having come from Lin. A single
hair recovered from that T-shirt was not microscopically
consistent with having come from Lin, Josie, Megan or the
defendant. No mitochondrial DNA was recovered from it. A
F watch with a broken strap was in the right pocket of her
trousers, as were two marbles. A necklace was around her
neck. Subsequent scientific examination of her trousers
confirmed that they were heavily bloodstained and also bore
G grass and soil staining on the lower front of both legs and
a number of places at the back. Sample stains were grouped,
consistent with having come from Lin or Megan Russell. A

A single hair recovered from the trousers was not microscopically consistent with having come from Lin, Josie or Megan or the defendant. Subsequent mitochondrial DNA analysis of the hair indicated that it may have originated from the same source as one of the hairs recovered from the sole of one of Josie's jelly shoes. Her left shoe was laced. The lace from her right was wrapped twice round her right wrist. Subsequent scientific examination of that lace revealed it was 79.5 centimetres long. The bloodstain on it was consistent with having been Lin's. There was a ligature mark on the wrist underlying the lace. Her face was markedly bloodstained and a strand of blue fabric was partly inside her mouth."

Now there were numerous severe and extensive external head injuries. I am going to summarise those in this way, members of the jury. There were various extensive lacerations and extensive fractures of various dimensions in various positions on the skull. You will see at paragraph 2.8 of the Admissions, 15 lacerations are identified and at 2.9, you will see that there are numerous fractures. Complex fractures, are described, members of the jury, of various parts of the scalp, described by the pathologist as "many extensive fractures to the skull." At 2.10: "The brain had been extensively disrupted and nearly severed at its root. Injuries below neck level were not major or

A life-threatening and consisted of a fracture dislocation of
the first bone of the right little finger, minor abrasions
to the area below the left ribcage, bruising to the side of
the right arm, minor abrasions and a small laceration on the
B back of the left lower arm and a five-centimetre laceration
on the middle of the left lower arm. In the opinion of the
pathologist, death was occasioned by a sustained, severe,
C repeated and vicious assault about the head. The only
possible defence injury present was the fracture of the
right little finger, although this could have been a
D stamping injury, whether intentional or accidental. The
ligature about the right wrist suggested that the assault
occurred while Lin was tied, the free larger loop of the
ligature being of a size appropriate to having been around
the left wrist which may have slipped off the left wrist as
E she fell into the position in which she was found or have
been slipped by her when she was assaulted. Her head had
been subjected to at least 15 severe blows from a blunt
F instrument, part of which had a circular face with a
diameter in the order of three centimetres, such as a hammer
or end of a pole, which had caused extensive lacerations and
bruising, at least nine fractures of the skull and
G considerable disruption of the architecture of the brain
which caused her death."

Megan, members of the jury, and I will turn straight to the

A injuries on Megan which are on page 5 and, again, members of
the jury, I will summarise them in this way. There were
various extensive lacerations and extensive fractures of
various dimensions and in various positions of the skull.
B Those lacerations are itemised, members of the jury, at
paragraph 2.14. There was fresh extensive bruising to the
surface of the scalp and the fractures are described,
members of the jury, at paragraph 2.16 and you see the
C effect of that Admission, members of the jury, that the
fractures and the damage to brain tissue is there
described. 2.17: "Massive laceration to the right side of
the brain." 2.18: "Other marks of injury included ligature
D marks on both sides of the neck." You heard from a medical
expert about that and we will reach that, members of the
jury. "Bruising behind the left ear and a horizontal
E laceration inside the left ear. In the opinion of the
pathologist, Megan had been subjected to severe, repeated
and sustained violence to the head involving at least seven
severe blows from a blunt instrument causing extensive
F bruising and multiple fractures, including a compound
transverse fracture of the skull from which brain had
issued. She had been restrained by a ligature around her
neck with sufficient force, either directly applied or as a
G result of her own struggle, to cause marked abrasions of the
skin. Cause of death: massive head injuries. The ligature
marks to Megan's neck may have been caused by material

A similar to the blue tights found tied to the sapling in the clearing, but the features in the marks also suggested that the ligature may have been a shoelace or similar ligature." That was the postmortem evidence, members of the jury.

B I turn now, members of the jury, to the scene of crime evidence and refer you, please, to paragraph 3.1 of the Admissions, headed, "The Scene in Cherry Garden Lane."

C "Examination of exhibits recovered from the scene of the attack in Cherry Garden Lane revealed the following:

D various bloodstains on the sticks, leaves and debris recovered from around where the bodies lay in the copse was tested. The results were entirely consistent with the blood having come from Lin, Josie or Megan. Some hairs and fibres were also found on these sticks which were also consistent with having come from the hair and clothing of Lin, Josie and Megan. A white cropped vest was found under Lin Russell's right calf. It bore a few spots of blood and a number of hairs consistent with Lin, Josie or Megan's.

E Josie's swimsuit was found close to Megan's left elbow, extensively bloodstained and a sample bloodstain matched the STR," that is a DNA profile, members of the jury, "of Josie. The white towel found under Lin's left shoulder bore heavy bloodstains consistent with Lin's or Megan's. Some red fibres recovered from that item couldn't be linked to red fibres found in items worn by Lin, Josie or Megan at the

A time of the attack or found in their home. Tied around a tree in the copse was a pair of well-worn blue tights. Three knots were tied in the tights, the first being likely to have been tied to secure the tights around the tree, B incorporating some twigs and leaves. The other two knots formed loops near to the ends of each leg in a way consistent with them having been tied around the wrists or ankles of the victim. Whatever these two knots had been C tied around had got free without the knots being untied. Small spots of blood were found in a number of areas, a sample of which matched Josie Russell's STR profile. Josie's lunch bag, lying next to Lin Russell's right hand, D was moderately bloodstained on the outside surface and there was evidence that the blood had been projected onto it. There was some diffuse bloodstaining inside the lunch bag which may have been due to blood seeping in. There was E bloodstaining on the green outside lid of the lunchbox that was inside the bag, which, when sampled, matched the STR profile of Lin Russell. A finger mark was found in the blood on that lunchbox lid. It contained insufficient F detail to be capable of identification. However, it included some low count loop pattern which could not have been made by the defendant, whereas it could have been made G by Lin Russell who had such a pattern on her right little finger. Megan's lunch bag, found close to Lin Russell's feet, was heavily bloodstained on the outside, some of the

areas being due to contact with bloodstained hair. There was some diffuse bloodstaining inside the lunch bag which may have been due to blood seeping in. A finger mark in blood was found on the inside edge of the lunch bag, but it contained insufficient detail to be capable of identification or even elimination of any individual. Blood was detected on the red flask and the lunchbox, both of which were inside the lunch bag, but not on the inside of either item. No DNA profile could be obtained from any of the bloodstaining. Items SRG21 and 22 are the left and right jelly shoes found above Megan's head. Both were bloodstained over the upper surfaces and the raised parts of the underneath, suggesting that the upper and lower surfaces had been in contact with a considerable quantity of liquid blood. Four hairs were found on Josie's right shoe, two of which were different from the hairs of Lin, Josie or Megan. Full DNA profiling on these hairs was unsuccessful, but partial mitochondrial DNA information obtained from one of the hairs was sufficient to indicate conclusively that the hair did not originate from Lin, Josie or Megan or the defendant and also suggested that each of the two hairs was from a different source. The partial mitochondrial DNA sequence obtained from one of these two hairs was the same as the partial sequence obtained from a single hair recovered from Lin's trousers and, therefore, may have originated from the same source. A black bootlace found

A 45.6 metres north of the bodies at Cherry Garden Lane was a
flat, black, braided, polyester bootlace, 99 centimetres
long, cut at one end," not recently and therefore
incomplete, "knotted tightly in three places, all fairly
B close together, all formed in the same way and all towards
the middle of the lace. 75 different areas on the shoelace
have been extensively tested for DNA. The majority of the
areas tested give full or partial results which matched
C Megan Russell. Some areas showed components which matched
Josie Russell. In some areas, there were traces of DNA
which failed to provide sufficient detail to enable any
meaningful comparison to be made with the DNA of any
D person. Megan's blue/green swimsuit was found 69.2 metres
north from the bodies in Cherry Garden Lane. No blood or
semen was found on it. A number of red cotton fibres found
on the garment were different to fibres in the clothing worn
E by Lin, Josie and Megan Russell or found in their home."
That completes that reading, members of the jury.

F You heard from two experts in the field of examination of
scenes of crime.

G Steven Griffiths was responsible for examining the crime
scene. Of the two lunch bags, he said that they were zipped
when found. He photographed the finger mark in blood which
is on lunch bag, SRG9, and also seized Josie's lunch bag,

A which was found by Lin's head, SRG16. That was also zipped,
B bloodstained outside and in. On the green lid of the
C lunchbox in that lunch bag, he saw another fingerprint in
D blood and took a photograph of that and you have seen that
E photograph, members of the jury. He repeated that 45.6
F metres from the crime scene and towards the school was found
G the black bootlace in the grass verge on the left-hand side
H of the track. One of the photographs that he pointed out to
I you showed an area of blood spots, that is on the track and
J not in the copse itself and those blood spots were marked,
K you remember, by little square cards, white cards - you can
L see them in the photograph - marked A, B, C and D. There
M were also shreds at the scene that appeared to be of blue
N towelling from various places.

O Cross-examined, he said that he had examined the scene for
P three-and-a-half to four days with a team and it was a
Q thorough, pain-staking examination. He then said that he
R had examined thousands of scenes and this was an incredibly
S difficult one to examine because of its remoteness. "The
T ground was hard. There were no footprints and no tyre
U tracks. Leaves were moving about." It was the single
V hardest scene, he said, that he had ever had to examine.

W James Fraser, another officer specialising in forensic
X examination, gave evidence and said that there were a number

A of areas of heavy bloodstaining in the area of the bodies
and in at least two other areas which indicated that the
bodies had been moved at some stage. The areas appeared to
have been stained by blood seeping or draining from a body.

B "Megan and Lin," he said, "had been subjected to repeated
blows in the place where they were found, not necessarily
exactly where, but very close to where they were found." Of
C the tights in the tree above Megan, he said he found no
evidence of attack there. "The blood on the track," he
said, marked by those four white cards, "could result from
somebody bleeding there or somebody carrying a weapon that
was dripping blood. It's a fine balance," he said, but he
D was in favour of somebody bleeding rather than carrying --
rather than the blood coming from the carrying of a weapon.
That was because he found no bloodstains actually on the way
into or on the way out of the copse and you would not
E necessarily expect to find such bloodstains if the injuries
at that stage were relatively minor. That was the effect of
the evidence that he was giving.

F I turn to Admission 3.3, members of the jury, and it comes
in the context of his evidence. "Lin had no handbag or
purse with her when she was attacked. She had left them at
G home. There was no evidence of ejaculation at the scene.
There was no medical evidence of any sexual interference
with any of the victims."

It is convenient at this stage, members of the jury, having dealt with the postmortem examinations, to deal also with the evidence as to Josie's injuries and treatment which you will find at paragraphs 4.1 and following of the Admitted Facts. "Josie was admitted to the hospital just before 2 o'clock in the morning of Wednesday, 10th July. She was conscious, responding to voice and touch, but not speaking. She had a number of severe cuts to her scalp associated with heavy bruising and suggestive of skull fractures and further underlying injury. What appeared to be brain tissue was protruding from an injury behind the left ear. She had minor bruises on her right shoulder and right upper arm, superficial scratches to her right eye and abrasions to her right knee. There was dried blood on her face, arms and hands, both legs and the soles of her feet. She was dressed in a red cardigan over a blue striped dress, white petticoat and pants but not wearing shoes or socks. She was sedated and stabilised. Following further examination, arrangements were made to transfer her to King's College Hospital in London and she left Kent at 4.50 that morning. Her red cardigan was bloodstained, particularly to the left sleeve, the bloodstains matching her DNA profile. Her blue and white striped dress was heavily bloodstained. She underwent neurosurgery at King's College Hospital on 10th July. Her head injuries were these: a large puncture mark above the

left ear with five further lacerations to her scalp above and behind the puncture wound, a large laceration with two smaller ones running parallel and a further laceration at 90 degrees to those three and one further small one beneath and in front of the three parallel wounds. A large bruise-type injury to the area of the brain on the upper left side underlaying a depressed fracture of the skull in several fragments. Extensive tearing of the brain covering. The injuries, which were seriously life-threatening, indicated that Josie had been hit several times to the head. A large amount of damaged brain tissue with splintered bone fragments caused by the bones -- blows to her head, had to be removed. Surgery was successful but left Josie with some intellectual impairment. Injuries noted to the rest of Josie's body consisted of small grazes and bruises to her legs and upper body."

That completed, members of the jury, the examination of the crime scene and it completes a description of the injuries.

So it follows from that, does it not, members of the jury, that two objects, the bootlace and Megan's swimming costume, were found not at the scene of crime itself but respectively 45.6 metres and 69.2 metres back up the track away from it, one on the left and the other on the right-hand side of the track. Who took them or dropped them there? As to the

A lace, there is no doubt that it had been at the scene of
crime itself. Both Josie's and Megan's DNA were found on
it, especially Megan's, and it was very possibly, or even
probably, what was wrapped or pulled around Megan's neck.
B So the killer, you may think, must have taken it from her if
it was what was used and have taken it up the track, whether
on foot or by now back in his car, before discarding it.
What about the swimming costume? How did that get there, 69
C metres up the track? Who dropped it there? Was it sheer
coincidence? Did Lin, as she walked along the track, simply
drop it there by mistake from the bag that it was in as
D Josie surmised, on this day of all days and only seconds
before the fatal confrontation? If not, how else can it
have got there? Did the killer take it back up the track,
as he did the lace, before discarding it and if he did, what
E was his interest in that costume? Does it connect with any
other piece of evidence that you heard in this case or has
it no connection at all? It is right to say that it had no
bloodstains on it. Does that suggest that the killer had no
F contact with it at all? These are all questions for you and
they are entirely for you to answer.

G Tourniquets. Scott Hayes was a young man who met the
defendant in 1993 when, at that time, the defendant had a
red Escort in which they often went out and the defendant
would wear a grey hooded sweatshirt and stone-washed jeans

A or jogging bottoms. He was a heroin addict, the defendant
was according to Scott Hayes, and would inject into his
arms. He had a bag in his car which included syringes and a
shoelace about 2ft. long with a knot at each end and two or
B three knots along the length and he used it five or six
times a day, wrapping it tightly round his bicep." Scott
Hayes stopped going out with him about August 1995.

C Ian Hayes said he knew the defendant in 1993 and often saw
him injecting heroin, using a string from a hooded
sweatshirt to bring up the vein or else a belt. In 1996, he
said, the defendant had an orange or red Metro.

D Neil Hayes knew the defendant from 1991 onwards. He saw him
injecting heroin about 20 times into his forearms.

E "Eventually, he," the defendant, "would need a tourniquet
for this and he would use a belt or a shoelace or a cord
from his sweatshirt. This was about 1991 to 1994. The cord
that he'd use was 2ft. or 3ft. long and had a knotted loop
at one end."

F Justin Woodrow knew the defendant from the end of 1994 to
summer of 1996. He would inject heroin, the defendant
G would, and raise a vein with a tourniquet. The last two
times he saw him do it he was using a shoelace. That was
about June and July of 1996.

A

Kerry Caulfield said that the defendant used a tourniquet to inject heroin, often a red patterned one, but also whatever was to hand, including a kettle lead and a rubber one.

B

Tracey Carr lived at the defendant's flat for two or three months up to June/July of 1996. "He would inject heroin and use tourniquets, including a leather belt, a necktie and a white shoelace." She had seen him in a "tatty, white, two-door car."

C

D

Rodney Gowers, 1994 and 1995, often saw the defendant injecting heroin using a tourniquet, including a rubber one, a belt and bootlaces. He would wear T-shirts and sweatshirts with hoods and he once used a bootlace as a tourniquet while he was in his car.

E

F

G

Agreed Facts 5.1, members of the jury. This is on a different theme, namely, knowledge of the area. From when he was 10 until he was 16, the defendant was at a number of children's homes in Kent, including Eastry Children's Home at Eastry, from where he attended a local school and a home near to Canterbury University. You know where Eastry is, members of the jury. It is not actually included in your map, but there is an arrow, is there not, pointing to its presence a mile away from that scene? "In the early 1990's,

H

A the defendant was sufficiently familiar with the countryside
around the East Kent/Canterbury/Dover area to be able to
give directions without a map when driving around the area,
including the centre of the village in Goodnestone, Lower
B Rowling Farm and the centre of Nonington" and a separate
Admission in the same paragraph: "The defendant habitually
carried a variety of tools about in whatever car he was
using, including a hammer, screwdrivers etc.."

C Members of the jury, you heard evidence at some length from
Lindsey Smith, an expert in drugs abuse, and from Roger Ide,
an expert in knots, but their conclusions in the event were
D not in dispute, namely, that the black bootlace was in every
way consistent with being a tourniquet used by abusers of
heroin. That was because of its distinctive stretching at a
certain point along its length and because of the knots that
E were in it and it was typical, said Mr. Smith, of the sort
of tourniquet which abusers would use in order to inject
themselves up to several times a day, because they,
unfortunately, become so used to injecting themselves in a
F particular place that the skin there becomes hardened and
they need to raise a vein. Mr. Smith also said that knotted
bootlaces such as this were tourniquets commonly used by
G drugs abusers.

Dr. Heath gave evidence, members of the jury. He gave you

some evidence, in particular, about the injuries to Megan's neck. "The marks there," which he illustrated to you in a drawing, "result from drying, postmortem," after death. What happens is that there is an abrasion of the skin which becomes very apparent after death. You would not see those marks in life or at the time of death and there were no injuries underlying those marks, nor would he have expected any. In his opinion, the lace and not the tights would have produced the injuries to Megan's neck. "The assailant could have been at the front or the back of Megan at that time and most probably was pulling both ends at the same time or possibly one end. That's more probable than twisting. This would produce a frictional effect which rubs off surface skin, but the cause of Megan's death was the head injury, not strangulation." He said that "when there has been shutting off of the air passages, you can get pinpoint haemorrhaging in the scalp and there was some on the right-hand side of Megan's scalp internally. A substantial amount of force is needed to produce those marks," that is to say the marks around the neck. The maximum force that he, the doctor, could apply would be a force of about 20 kilograms -- kilograms, members of the jury. I am having trouble with my conversions. The force that was used here, he thought, was less than 20 kilos because it has not the -- because the marks of the ligature have not become embedded in the skin, but still significant force was used; it is not

A easy to say for how long. The pinpoint haemorrhages may
have been related to the dying process, not to pressure on
the neck. A maximum of 30 seconds' application of force he
would say there would have been to Megan whilst she was
B still alive, around the neck. Her death itself would
prevent the onset of further pinpoint haemorrhaging and
constriction of the neck may itself cause unconsciousness.

C Another subject now altogether, members of the jury: the
defendant's cars. Evidence was given by his aunt, a lady
called Sylvia Beard, who is the sister of the defendant's
mother and who lives in Chatham and was there in 1996. She
D has a daughter called Elaine Fiveash. In 1996, in May, she
had just come home from Tenerife, had Mrs. Beard, and after
that, until about 13th June, she had no car and during that
time, the defendant gave her and her daughter a lift. "The
E car was very dirty; a dirty beigy inside. It looked a dirty
red colour outside. There were nuts and bolts and bits and
pieces inside it. I don't know what make it was. A
two-door car, old and dirty. I sat in the passenger seat.
F I don't know if there were any headrests. There was an old
gear stick. No glove compartment. I've never seen the car
before or since. I can't remember all his cars. He had
G other cars. I've seen him, for example, in a red Cortina,
but that was two or three years earlier. I've seen him both
clean-shaven and with two or three days' of growth at

A different times. He would wear jeans, T-shirts and jogging bottoms and he had a grey top with a hood and a zip."

B Cross-examined, she said that he would often change his cars. "They were generally old ones. At one time he had quite a few cars, but that was a long time ago. In 1996, he only had one at any one time. After the red car that he gave me a lift in, he got a white car and that's the last one I remember him having. The white car in the

C photographs," no. 56 and following, that is the Toyota Tercel, members of the jury, "looked, I thought, like the one he had in July of 1996 and I think it was before my birthday, on 18th July, that he showed it to me. I've said D that I thought it looked like that, but I can't be 100% sure. I don't remember. It's too long ago. I don't know if the photograph of the defendant was taken in the week of E my birthday in 1996. He looked like that then. I said to the police, 'About 1996 I think he had a white car,' but I don't remember anything else about it. I can't be sure. A car is a car to me. I can't take it beyond a white car."

F Her daughter, Elaine Fiveash, said that on Friday, 14th June 1996, the defendant gave her and her mother a lift in a dark G red car. She did not know the make. It was not a big one, it was a two-door and she sat in the back. "It was dirty inside with nuts and bolts and screwdrivers and the back seat was wobbly. He'd wear jogging bottoms, sweatshirts and

A jeans and had a hooded sleeveless top garment."

B Gail Styles said that she knew the defendant. In the summer of 1996, he gave her a passport photograph of himself and in that summer, she saw him in various cars: red, green and white or beige.

C Ella Styles said that before August of 1996, she saw him in "various tatty cars;" one was red, another beige, one was green. He wore a grey hooded sweatshirt.

D I turn now, members of the jury, to Admission 5.2 which is on page 12. "On Friday, 5th July 1996, the defendant spoke to Detective Sergeant Norman Lamour in the Upper Bell pub, Chatham. He was alone and left in a Toyota Tercel, GKK 234Y." You have seen photographs of that one. "On E Wednesday, 10th July, the defendant again spoke to Detective Sergeant Norman Lamour in the Upper Bell pub. He arrived at 1.30 and left shortly thereafter. He was clean-shaven, F wearing a jean jacket and jeans and looked clean and tidy. Whether he had a vehicle that day was not seen. Neither of the above conversations had any connection whatsoever with the murder of the Russells." I will continue my reading, G members of the jury. "On Wednesday, 10th July, the defendant had a medical appointment at Maidstone. During the earlier part of the morning, he telephoned the hospital

A to rearrange the appointment to Gillingham, saying that he
no longer had transport. Arrangements were made accordingly
and he kept the appointment at Gillingham around lunchtime.
B 16th July, stopped by police driving the Toyota Tercel. He
said it was his car and that he had had it for two days.

C The photograph," the one that you have seen, members of the
jury, "was produced to the police by the defendant's sister
in August of 1997 and it was taken in July 1996." That
C completes that phase, members of the jury.

D A short passage of evidence now, members of the jury, about
Cash Converters and journey time. Beverley Hare is a lady
who worked at the little pawn shop, if that is what it is,
members of the jury, called Cash Converters. Well, it is
not a pawn shop, it is an exchange -- where you can take
E things and receive cash for them. She referred you to a
transaction in which on 9th July 1996, that is the day of
the killings, she had bought certain goods from Michael
Stone for £8 and that transaction had taken place at
F twenty-minutes-past-midday that Tuesday and is evidenced in
Exhibit no. 13 that you have seen. In his interview, the
defendant said about that transaction that he went to Cash
Converters with a friend and that it was not his, the
G defendant's, transaction, but his friend's transaction and
that he put his own name to it, the defendant had, because
he had identification on him and his friend did not. That

A is what he says about it, members of the jury. You were
then told about the journey time from Cash Converters,
Chatham, to Goodnestone, observing all speed limits, doing
about 60 miles per hour on the motorway. The journey time
B is about 52 minutes. That was with no hold-ups in moderate
traffic.

C A completely different phase of evidence now, members of the
jury: Sheree Batt. Sheree Batt told you that in the summer
of 1996, she lived at 18 Wiltshire Close in Chatham. She
had been living there for about two years. It was a
three-bed end of terrace and to get to the front door you
D had to walk up the steps. There was a car parking space
beyond that, but when you were standing at the front door in
the house and looking out, you could not see a car there.
E You would have to go out into the garden and look over to
see cars down on the road or in the parking area. In the
house, there was a ground floor, a first floor and an attic
in the roof. She first met the defendant about 15 years
ago, that is to say about ten years before the summer of
F 1996. She had met him through her brother who was a friend
of his, but she did not see him very often. Her partner at
that time, and still indeed her partner, was a man called
G Lawrence Calder. She had been together with him for about
three years. Her birthday is on 31st May and Mr. Calder,
she told us, was released from prison on that day and came

A to live with her, that would be to say on 31st May 1996. He
was re-arrested about two months later on 24th July 1996.
Between those two dates, he was living nextdoor at no. 20,
but popping in regularly to see her. She also had a
B daughter living with her who was 12 years' of age at that
time. After his release, he, Mr. Calder, started going
round with the defendant. That would be about two weeks
after his release. So he was doing that from about mid-June
C if that is right, members of the jury, because Mr. Calder
had no transport, so the defendant would call for him "and
he'd come to my address. He'd call at about midday or late
in the morning or early in the afternoon, any time between
D about 11 in the morning 'til about 3 in the afternoon.
There was," she said, "a particular day when I noticed
something. It was about two weeks before Mr. Calder was
re-arrested" and the date of re-arrest was 24th July. So
E she is saying that this happened about two weeks before
24th. "I was in and my daughter and Mr. Calder were also in
the house. It was any time between 11 and 3 o'clock. He
knocked at the door. I'm not sure who answered, it was
F usually me and when I saw him, I noticed blood on him. I
was in the hallway and he was at the front door. The
hallway's about 12ft. to 14ft. long, so that is the furthest
G I would have been from him. He was wearing a T-shirt and a
zip-up jogging jacket. It had a hood. It was a dark one,
navy blue. I don't remember how far up or down it was

A zipped; at the waist I would say. The T-shirt was under the
jogging top. I could see it up to about his waist. It was
a white or a light grey one. I don't know what he was
wearing on his bottom half; he usually wore jeans. He had
B blood on his T-shirt" and she demonstrated, members of the
jury, with her hand, an area from the chest -- to the
chestbone from the area of the neck line and several inches
down from the neckline. "It was blotchy," she said. "I
C can't describe the quantity. I asked him what it was and he
said he'd had a fight. I couldn't see any injury on him and
he didn't complain about any sort of injury. He said he'd
had a fight in Borstal." Borstal apparently, members of the
D jury, is a name of a place in Rochester in the Medway
Towns. "When I mentioned the blood to him, he zipped up his
jogging top to the top and we didn't say any more about it.
I accepted what he'd said and then he and Calder went out.
E I don't know when Calder returned that day. I couldn't see
what vehicle he'd come in. I did see two vehicles of his
between May and July: one was a long white one and one was
a small one, a blue one. He got rid of the white one and I
F never spoke to him again about the blood that I'd seen. The
police saw me after his arrest in July 1997 and I made my
first statement to the police on 20th July 1997."

G She was cross-examined, members of the jury, and she told
you that she was still living with Mr. Calder, that he was a

A man who was in good health and voice who had no amnesia and that on release from prison back in 1996, had lived with her neighbour. "When I made my statement in 1997, I said he came to live with me because he did when he first came out. He went to my neighbour's only because my daughter didn't want him to be with us all the time. The day the defendant came, that is the day I'm talking about, Mr. Calder was at my house and sometimes he stayed over. I don't remember anything else about the day." It was put to her that the defendant had been arrested on 17th July 1997. She said, "Well, I don't know if I heard about it on that day. The police came to see me on 19th July 1997. I remember two police officers coming. I knew then that he'd been arrested for the Chillenden murders. I knew about the case. I remember it being on the news in Kent at the time. It was on a lot, so I knew what the police were talking about. When they first came round, they said that they were coming for Lawrence. The police probably told me on the 19th that they'd arrested the defendant for the murders. It didn't enter my head to tell them about the blood. When the police came to see me, Calder was in prison and he rang me most evenings and I told him that night that the police wanted to see him and probably told him that Michael Stone had been arrested for the Chillenden murders. I didn't mention the fight in Borstal during that conversation and Calder didn't mention the blood to me. I don't think that I mentioned the

blood during that conversation on the 19th; I can't say for certain." It was then put to her by Mr. Clegg that she was lying about that and he put to her part of a statement that she had made on 16th June 1999 when she said this: "I can say that I haven't discussed this incident with Lawrence prior to me seeing the police or, in fact, after. I have never spoken to Lawrence about what I have told the police and he has never told me what he has told the police. We've never discussed what was in our statements." Confronting her with that, it was put to her by Mr. Clegg that she was not telling the truth about whether or not she and Calder had discussed this matter of the blood. She replied: "It is not a lie. It was the truth that I was telling the police in that statement." It was put to her, indeed, she was reminded, that she had had a conversation with Calder on the morning of 20th July 1999 and had made her statement in that afternoon. She said, "I probably told the police that we had discussed it, but not in any specific detail." It was then put to her that what she had said, what I have just read to you, members of the jury, and what appears on another page of a statement she made on 9th September, as to which I shall remind you in a moment, were diametrically opposed and this is what she said, members of the jury, in her statement of 9th September: "I've been seen today by Detective Sergeant Littlewood and Detective Sergeant Silson and have been asked specifically if I had a conversation

A with Lawrence on the telephone on 20th July 1997 concerning
the incident where Michael Stone turned up at my house with
blood on him and, in addition, whether this telephone
B conversation took place prior to me giving my statement to
the police. I can say that we spoke about everything and
everyone. I would say Lawrence most probably did telephone
me and we did discuss this incident about the blood, but not
C in any specific detail. When I later that day discussed
this with police officers from Kent Police and provided a
statement, I can say with absolute certainty that the
information I put into that statement is the truth and is my
D recollection of events." It was put to her, members of the
jury, that that was inconsistent with what she said on 16th
June 1999, namely that she had not discussed the incident
with Lawrence prior to seeing the police or, in fact,
E after. "I said," she said, "'most probably,' so I wasn't
sure." "How long was it that they'd come after the
incident?" "I haven't been lying. This is so long
afterwards. I can't remember everything about that
F conversation." So, in effect, members of the jury, she was
denying, you may think strongly denying - it is up to you to
evaluate it - that any inconsistency that she had been
G confronted with meant that she was lying about the matter.
She denied that she and Calder had decided to make up a
story about the defendant. She agreed that she could not,
in fact, remember what the defendant had been wearing below

A the waist and it was then put to her, members of the jury,
that in another statement that she had made on 20th July
1997, she had said that: "Mickey was dressed as normal in
stone-washed jeans." That was contrasted, and she was asked
B to comment upon it, with another statement that she made on
14th November 1997 in which she said: "I didn't look at his
other clothing, only looking at his top half. I've said he
was wearing stone-washed jeans because that is what he
C usually wore. I'm certain of the clothes on top, i.e. a
white or grey T-shirt under a jogging top with a hood." It
was put to her that she knew that Calder had made a
statement saying that there was blood all over the
D defendant's jeans. She denied knowledge of such a statement
being made by Calder. I give you this warning, members of
the jury, that the fact that such a statement was made by
E Calder is not evidence that there was blood on the
defendant's jeans. Mr. Clegg has put that to the witness
because he contends that there was a discrepancy and/or
F collusion between Miss Batt and Mr. Calder on this subject
and that is why it has been brought to your attention. It
is a matter entirely for you to evaluate. She denied that
she had made her statement of 14th November in which she
said that she hadn't looked at clothing other than his top
G half because their stories did not tally. She said,
"Whatever Lawrence said, he said. I wouldn't be standing
here if what I'm saying were not the truth." She agreed

A that Calder would speak to her daily from prison, but said that, "We did not speak about what each had said to the police. I didn't want what he said to be in my head."

B Asked where Calder had been when she says that she saw the defendant with blood on his T-shirt, she said that "He was in the house somewhere, but I don't know where he was in the house." She was asked if Calder had seen him that day. She said, "Well, obviously he saw him because he went out with him." The defendant had come to collect him.

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D In re-examination, she said, "This was the only time I ever saw him with blood on him and my first contact, I'm told, with the police was on 19th July 1997, the day before my statement, but I don't remember these dates now. The police went to no. 20 first. They were looking for Lawrence's.

E Then they came round to see me." She said that, "Giving evidence is not the sort of thing I like to do. I wish I weren't involved in any of this." She was then, members of the jury, reminded by Mr. Sweeney of what she had said to the police on 16th June 1999. She had told the police on that date and I read it to you: "I would speak to Lawrence every night when he was in Canterbury Prison if he had a phone card. I can't phone Lawrence, he can only phone me.

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G I can't specifically remember telling Lawrence, but I would imagine I most probably did tell him that Michael Stone had been arrested and that the police had called round to

A Tania's looking for him. I had another visit from the
police which is when I first made my statement about seeing
B Michael Stone with blood on him. I can recall that the
police visited me and asked specifically how I knew Michael
Stone and what I knew of him. I was speaking to them for
some time and I was asked if I could remember anything
C unusual concerning Michael Stone. It was then that I
remembered the incident I've described when I saw Stone with
blood on him. I've been asked by Detective Constable
D Sergeant Littlewood and Constable Silson if I discussed the
incident with Mick turning up with blood on him with
Lawrence prior to me telling the police about the incident.
I can say that I haven't discussed this incident with
Lawrence prior to me seeing the police or after. I've never
spoken to Lawrence about what I've told the police and he's
never told me what he's told the police. We have never
E discussed what was in our statements." So what she was
saying there, members of the jury, was that she was
admitting from a very early stage, from 16/6 to the police,
F that she was speaking to Lawrence daily when he was in
Canterbury Prison, but denying they had ever discussed the
contents of their statements with each other.

G We will stop there now, members of the jury, and after the
adjournment, I shall remind you of the evidence of Damien
Daley. I hope that it will not in any way be inconvenient

A for you, members of the jury, if we sit again at
twenty-to-two. You will then be released at 3 o'clock this
afternoon.

(In the absence of the jury)

B MR. JUSTICE POOLE: Are there any matters that counsel wish to
raise?

C MR. CLEGG: My Lord, no.

MR. JUSTICE POOLE: I will rise.

C (Luncheon adjournment)

D MR. JUSTICE POOLE: Members of the jury, Damien Daley. This
witness, as you well understand, is central to the case and
obviously you should examine his evidence with great care.
E Only if you are sure that he is telling the truth, that is
to say that the defendant did confess to the killings and
that it was a true confession, should the verdicts you
return be ones of "Guilty." Equally, if you are not sure of
that, then the verdicts must be ones of "Not guilty." The
other evidence in the case on its own is not capable of
supporting verdicts of guilt.

F Damien Daley told you that he was born in May of 1975, so he
was 22 in September of 1997. He was remanded to Canterbury
G Prison about July of 1997 and was later moved to the C Wing
Segregation Unit and he had been there about three weeks
before the material time, that is to say before the matters
he spoke of in evidence and he was in one particular cell

A all of that time. "The cells above," he said, "were for nonces," that is to say for prisoners at risk in prison.

B "There was wire meshing, like chicken wire, on the windows." He was in Cell 3. "The windows were mainly left open." He described the pipe. You have all seen it. He said, "It would be hot or warm, building up; it depended." "At 8 o'clock in the evening," he said, "it probably would be hot."

C You're not allowed to have privileges in there, but you can get newspapers. Either the people upstairs drop papers on a line and you pull the newspaper through the wire or screws push them under the door when they're knocking off. There's no television. The night shift starts about seven in the evening. The day officers go off then. I don't know what that means in terms of numbers of officers."

E Concerning offenders against women and children, he was asked what he thought. He said, "I think they shouldn't be allowed to communicate. They are scum bags. I can't speak for other's opinions, but I think mine are typical. You only know names," he said, "on the doors to your right which is in the direction of dinner and the showers. I was able to communicate with other prisoners on the wing. You can either communicate along the pipe, right and left, or send papers through the window on a line or talk through the

A windows."

Asked more about the pipe he said this: "You can talk into the corner where the pipe is and so communicate through into the next cell. It's a bit echoey, but you can do it."

B Members of the jury, you can of course compare his descriptions of acoustics in the cell with your own impressions, making any allowance you think necessary for changed conditions. As you already know, Mr. Daley had not been told of your visit to the cell before he gave evidence. That gives you an opportunity to gauge his reliability, certainly on this subject. "In Cell 3, if I wanted to talk with the man in Cell 2, I would go to the bed, lean as close to the pipe as possible and talk through it. You can hear just as easily by turning your head and putting your head to the wall, not on the pipe itself because it's too hot, not on the wall itself, but close."

"About the murders in Chillenden, I knew very little. I'd heard something on the news. I did hear that a woman and child had been killed, but it was very little. I couldn't tell you the detail." Obviously, members of the jury, that is an important piece of evidence if you accept it. It would mean, you may think, that he could not know the detail of the confession that he relates, unlike if he followed it all in the media. It is for you to decide.

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Asked about the events of Tuesday, 23rd September 1997, he said that he did not know the name of the man nextdoor in Cell no. 2 before the events of 23rd. It is common ground, members of the jury, that Daley did not know that the defendant was going to be moved into that cell. That decision was taken by the Governor on the 22nd and Daley - it is common ground this - could not have been aware that it was going to happen. "A few of the lads were shouting and screaming at someone, saying, 'Come to the window. What are you in for?' It was a jail interrogation. This was about 8 to 8.30 in the evening. He said he was in for robbery and intimidating witnesses and another charge I didn't catch. They shouted, 'What else you in for? Don't lie!' He went quiet. They shouted at him to come to the window and defend himself. They knew in their own minds what he was in for. He said, 'You know what else.' They said, 'Come to the window and defend yourself if you're innocent, we'll talk about it' sort of thing. That went on for five or ten minutes. I hadn't said anything up to now. I went to my table and started reading the paper and then I cottoned on to what was going on. I thought I'd talk to him in the morning. I thought if the screws heard what was going on, either I'd get moved or he would. If officers think someone's getting it from inmates, they'll move him or move the people shouting and screaming. I think the paper I was

A reading was the Mirror. I'd got it through a line," i.e.
passed from upstairs on a line. He described that method to
you. "I told the others to leave him alone because he was
innocent and only in for robbery and to be quiet basically
B and they went quiet. I then got down from my window. There
was a short pause and then I could hear someone talking to
me through the wall from Cell 2. When I first heard the
talking, I was sat at the table under my window. I realised
C where the sound was coming from and went and lay on the bed
towards the pipe with my head through the bars on the bunk.
The person told me I was his mate and thanks for doing
that. I told him to shut up, but carried on listening. A
D bit of a conversation went on and he began to tell me
certain things. He started talking about 'smashing heads,
breaking eggs' he said. I was confused. One minute it was,
E 'You're my mate,' the next it was a different
conversation. He said, 'I'd have been okay if that slag
hadn't picked me out' or something. 'It'd probably be all
right if that slag hadn't picked me out.' He said something
F about breaking eggs 'and inside it would be mush' or
something. I told him to be quiet. I didn't really know
what he was talking about." Daley then said that he went
G back to his table and started reading the paper again, got
to an article about "a young girl having a bravery award or
something" and it mentioned the Chillenden murders. "I
didn't realise," he said, "that there was a survivor, nor

A that his name was 'Stone.' I thought it was 'Stow.' Then I
realised he was still talking to me and I went back to the
pipe. I'd read every article up to the Josie article on
B page 11. You tend to read everything and I reached this
article. It didn't refer to him by name. When he said that
person had picked me, I realised he was talking about this
situation, so I went back to the pipe to listen. While I
was reading the paper, he was still talking. I couldn't
C make out what he was saying then because I was away from the
pipe. You've got to be some distance into the pipe to get
the sound of it properly." Again, members of the jury, you
have all been to the cell. Make allowances for any possible
D differences between the audibility now and in 1997, but you
are in as good a position as you could be to judge the
truthfulness and accuracy or otherwise of Daley's account of
the acoustics in the cell. He said, "So I lay on the bed
E with my head through the bar with my head as close to the
pipe as possible. I told him to 'Shut up' and 'Be quiet' or
I'd tell the screws. He said, 'They won't believe you and
even if they do, I'll be nuttered off,' that is he'd plead
F insanity I understood. He said, 'Then I'll be out and it'll
be your kids.' He talked about tying people with towels and
something I couldn't make out, 'shoelace' or 'short lace.'
G I lay on the bed and listened and he talked about wet towels
and somebody 'being disobedient' and 'they tried to get
away, but they didn't get far.'" Is that something, members

A of the jury, that the defendant has gleaned and remembered
from the media or is it something said to him by the
defendant in the course of this conversation from the next
cell? It is obviously an important question and it is one
B for you to consider. "He said that they didn't have what he
wanted. He referred to them as 'paupers.' He said, 'The
dog made more noise than they did.' It was confusing. I
thought he was referring to a female in saying that. I now
C later know that there was a dog involved. He talked about
making someone watch or something like that, but they closed
their eyes and he hit them and he talked about the swimming
costume and that he'd been aroused by it. He said it had
D given him an orgasm or he had nearly had an orgasm or along
those words and one of the girls was disobedient, but she
didn't get far." As to the swimming costumes, members of
the jury, you know where they were found: one at the scene
E of crime itself, the other 69 metres up the track, dropped
there either by the Russell family accidentally before the
killing or, you may think, by the killer after it. "He said
F it was the swimming costume that had aroused him. He said
he'd sniffed it, the smell of it. He said 'costume,' not
'swimming costume.' I don't remember anything else. My
mind has gone blank, sorry. I had the hump when he said
G these things. I wasn't happy at all. I was shouting and
swearing at him. Every now and then, I'd pace round the
cell, then I'd go back and listen. He was very matter of

A fact. He knew what my reaction was from the other side of
the wall. This seemed to go on forever, but it might have
B been only 10 or 15 minutes. Not a conversation, but a
one-way situation sort of thing. The last thing he said was
they didn't have what he wanted. I've been trying to put it
C out of my head, to the back of my head and now you're asking
questions about it. I started shouting and screaming or
threatening him and that was it. I can't recall what
D brought it to an end. I sat on the bed, rocking to and
fro. The night seemed to go on forever, an eternity. All I
had was my ears, I didn't actually see anyone. It was like
being told a horror story, but more twisted when you
realised it was real."

E "In the morning, the screws came round. I told them to be
quiet. I shouted 'Stow, Stow.' The officers pulled me from
the wall. They could have heard it instead of me and I'd
have been out of it, but they didn't want to know. I just
sat there and the screws came in and moved me. I made my
F statement to the police on 26th September. The criminal
code is that you don't hurt women and children and old folk
or tell the police anything, but my uncle, on a visit, told
me that if I told the police, I wouldn't be a grass, so
G that's what led to my statement."

He was cross-examined, members of the jury. He said, "I

A know what's meant by 'fitting up.' It's when you help the
police in doing things that aren't true, for example,
putting a firearm in a place that wasn't meant to be there."
B It was put to him that it could include making up admissions
that have not been made. He agreed that it could. He said,
to that, "I didn't even want to be involved in this case.
C To say that I went out of my way to fit him up is," to use
his expression, members of the jury, "complete bollocks," he
said. "I didn't know Stone by name or personally. I knew
virtually nothing about the Chillenden murders. I thought
one woman and a child had been killed. I knew nothing
D else. When I read the Mirror, it didn't fall into place.
It didn't mention a dog or a bootlace."

E He agreed with Mr. Clegg that there was no mention of a
bravery award in the article, it just mentions Josie being
brave. So he agreed that he had not read about a bravery
award in the Mirror.

F It was put to him that he was well prepared for the job of
framing the defendant. He denied that. He said, "If I had
been, I would have remembered things well."

G He denied that he had read any other papers that day. He
said, "It takes a long time to pass papers through the
chicken wire."

A

"I remember him saying," he said in answer to a question, "that it gave him an orgasm or it nearly did. Giving evidence here, I was trying to be polite about it, instead of saying what he actually said which was, 'I had the greatest fucking orgasm of my life.' What he actually said was that," he said, "and that's what I said to the police. When I said 'nearly' here, I was trying to put it in a polite form. I'm sorry if my ifs and buts were misguided. I didn't want to upset the court, but I wasn't trying to mislead and I'm sorry if I seem to be getting the hump."

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"I didn't know the name of the man in the cell, only from what people were calling and they were calling 'Stow' or 'Stone.' I don't know when I found out that his name was 'Stone.' There was no mention of it in the Mirror."

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It was put to him that when he had gone to the wall, in the morning this was, that he had called out "Michael, Michael." He said, "No, that's a mistake. I must have said 'Stow' or 'Stone' and I knew that name from people shouting it above."

F

G

"The man nextdoor," he said, "did use the word 'paupers.' I had read that paper as best I could, though I am dyslexic." It was put to him that the word "pauper" appears

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A in that newspaper on page 6. He said, "There are some
things in the paper that I wouldn't bother reading, for
example, about Edwina Curry," he said. "I'd read about
B Arsenal and Ian Wright, but I wouldn't be interested in Bill
Gates and money." It was put to him that on page 10, there
was a story about a man refusing to bury his wife and he
agreed that more than likely he would have read that
C article, including the phrase that appears in it: "a
pauper's grave." "My statement says 'something like a
pauper' and that is a word that I knew from childhood
memory."

D He agreed that Stone belonged to a category of prisoner who
would not be safe in prison accused of murder of a mother
and a child. "The code is," he said, "that you don't hurt
E women or children." He agreed, therefore, that there would
be every reason for him to watch his back in prison.

F He denied that he had a reputation as the hardest man in the
prison, that is to say that Damien Daley did. He agreed
that on a previous occasion "I've said I had the reputation
as the hardest man because I was categorised as being a
tough guy in prison, but I don't consider myself a tough
G guy. If others say so, all right." He explained, "I did
have the reputation of being the hardest man in the eyes of
other people, but I don't consider myself that."

A He was then asked a number of questions, members of the
B jury, about drugs and in particular about heroin. He said,
C "I did not deal in heroin at the prison. I was caught
D trying it and I got into trouble. I pleaded 'Not guilty' to
E that. I was, in fact, guilty." He put it this way, that he
F had been "piss-tested twice." "On one occasion -- on the
G occasion when I hadn't taken heroin, I pleaded 'Not
H guilty.' On one occasion I had taken heroin, on another I
hadn't." He agreed that he had tried every drug. Mr. Clegg
then questioned Damien Daley about taking heroin in prison
in a passage that was quite complex, members of the jury,
and I try to summarise it for you. The defendant said that
he had tried heroin in prison and had got into trouble. It
was then put to him that on an earlier occasion giving
evidence on oath about these charges, the present charges,
he had denied taking heroin in prison. He admitted that
that was so and said that it was because he could not see
what relevance the question had to the evidence he was
giving. He then further explained that what he calls
"heroin" is the powder form of the drug and that what he
had been urine tested positive for were opiates taken in
tablet form which gave the same positive test as heroin and
that if he had taken heroin, by which he means powder, he
would have said so. He said that he had admitted taking
heroin on one occasion when he had been positively tested in

A this way, that is to say after taking an opiate medicine
and, therefore, denied that he had lied on oath about his
B drug-taking. On one occasion, he had changed his plea from
"Not guilty" to "Guilty" in a present adjudication -- in a
C prison, forgive me, "in a prison adjudication for taking
heroin, "because such adjudications," he said, "always ended
in a 'Guilty' verdict anyway" and he reiterated that the
D tablets contained opiates and that he had not lied to the
jury to cover up his drug-taking. Indeed, he admitted that
he had in fact in his life, in his time, taken every kind of
E drug. Members of the jury, it is entirely for you to decide
whether these questions and answers about his drug taking
and his admissions or denials of it at various times assist
you in assessing his credibility. The defence submit to you
that they do affect his credibility as a witness. The
prosecution submit that they do not affect it at all, that
his account fits the facts and that he has no improper
motives. It is for you to decide.

F He went on to say, "I agree I am a crook. I lie to get by
in life. Crooks beg, borrow and steal and lie to get by in
life. I am a criminal and do lie when it suits me. I've
G committed violence, robberies, thefts, burglaries."

He agreed that there was a lot of attention that evening
focused on the defendant by the others in the Segregation

Unit. "They were asking for him to defend himself to them. Certain inmates," he said, "consider themselves judge, jury and executioner."

He denied that he had a plan to fit the defendant up. "I thought if the screws come past and put us in different cells, I won't be able to do my own investigation in the exercise yard. I don't know what I had in mind. I don't know if I was going to smack him in the head or what. I was going to attack him next day unless he could convince me or something, but I wouldn't have been too bothered if I had been moved. I had him on one side and someone trying to nut himself off on the other. For all I knew, there were officers standing outside" and he agreed that if someone is talking through the pipe, somebody outside the door can hear. When he was at his desk, he said, "It was at the desk that's made of cardboard under the window and I was there when I heard something being said from nextdoor. I heard my surname being called: 'Daley.' I went to the bed. I didn't reply. You lean over and put your ear as close to the wall and pipe as possible, not actually touching the wall or the pipe" and then he demonstrated a distance to you, members of the jury, of about two to three inches, showing that his ear was that far from where the pipe goes into the wall. "He spoke and I listened for a bit. After a while, I moved away and sat at the desk. There, I could

hear his voice, but it's hard to hear what he's saying from there. It would be broken up. At the desk, I would miss words, but I would make out part and I read the paper there. I then went back to the bed and the position I had before. I spoke, too, and interrupted more than once. You turn your head to put your mouth close to the pipe, like talking into and listening from a tin can. There was a time when I was pacing up and down the cell because what he was saying was upsetting me. I couldn't hear what he was saying then. I'd heard what he had said and so I started pacing up and down, but I didn't hear what he was saying while I was pacing up and down. You couldn't possibly have heard him then. If he, on his side, had been whispering into the pipe, I wouldn't have heard anything. I haven't told anybody he was whispering." Members of the jury, is it that the speech from the next cell would sound like a whisper and be so described? It is a matter for you to evaluate. "If you were pacing up and down, you'd hear parts. It's a tiny room. It's hard to explain. I don't remember if he was talking while I was pacing up and down. I'm not 100% on that. I think there was some talking while I was pacing up and down, so I went back to the pipe. I had to go back to the pipe to hear. I would have heard only parts of broken conversation as I walked towards the pipe. I said, 'Shut your mouth, you're a sick twat.' I don't recall if I was walking up and down when he mentioned the 'shoelace' or

A 'short lace.'"

B He agreed that rumours could travel very fast in prisons.
He said, "I didn't know if it was the defendant in the cell
nextdoor. All I heard was a voice. Normally I would be in
a different wing from him. I didn't ask to be segregated or
for him to be nextdoor to me" and he denied that he had
framed the defendant.

C Re-examined by Mr. Sweeney, asked about his prison
sentences, he said he had had sentences of 18 months and 22
months and not very long sentences. "I don't remember," he
D said, "whether I was pacing or by the pipe when I heard the
expression, 'short lace' or 'shoelace.' I did decide at one
point to have words with the man in the yard during
exercise. That was when all the boys were screaming at
E him. It's not true that not a single word passed between us
that night. I'm giving evidence because I feel guilty
towards the little girl. I was told that my evidence would
be of no weight. I told them what I heard and that is the
F truth. When I was taking heroin, it was in Elmley Prison in
tablet form. It was a painkiller and I took it on two
nights." He went on to explain, "You don't use cocaine and
G amphetamine in jail. Who wants to be awake all night?"
Members of the jury, that concluded his evidence and it is
for you to evaluate.

A

I now turn to a different category of evidence, members of the jury, the forensic evidence concerning hairs, fibres and fingerprints.

B

A forensic scientist called Roger Mann gave evidence, a very experienced expert of 33 years in the Forensic Service, specialises in violent crime. He explained to you, in outline, the significance of mytochondrial DNA. He said he was familiar with the transfer of hairs and fibres.

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H

"There's a thing called primary transfer, which is direct contact, which is by direct contact, e.g. two people hugging each other." He said, "You could transfer up to 200 fibres in a hug. There's also secondary transfer. For example, if after the first hug you go on to hug a second person, some of the 200 fibres transferred in the first hug could be transferred in the second. Textile fibres can also be airborne." He said, did he not, that if you put down a piece of sticky tape, sticky side up, very soon you will find fibres adhering to it. He was saying that they are all over the place in other words. "It's a similar thing with hairs, though not in the same numbers and they don't tend to float in the air as much as fibres do, so they're not as numerous but the mechanisms are the same." He then gave you an illustration by saying this, members of the jury: "In this courtroom there is probably at least one hair from

A everybody in it which I could find given long enough and
B hairs can alight on clothes or become stuck on a shoe." He
C explained very briefly a thing called Lockhart's Theory -
D and we need not become bogged down with it, members of the
E jury - but the theory is that every contact leaves a trace
F of some kind, "but the thing to remember," he said, "is that
G traces may not remain forever. For example, you could lose
H 80% of those 200 fibres that I mentioned being left behind
in a hug, you could lose those, 80% of them, within an
hour. Also, many fibres may be very small and difficult to
find. I went to that scene weeks afterwards. It was a very
difficult scene for recovery. Things were moving about, for
example, leaves. There were many surfaces. There were few
or no even surfaces."

Will you go please, members of the jury, to Admission 2.3?
"Lin's brown T-shirt was heavily bloodstained, particularly
to the upper front and back. DNA analysis was done and the
results were consistent with the blood having come from
Lin. A single hair recovered from the T-shirt was not
microscopically consistent with having come from Lin, Josie
or Megan or the defendant. No mitochondrial DNA was
recovered from the hair."

2.5, members of the jury. "Subsequent scientific
examination of Lin's trousers confirmed that they were

A heavily bloodstained." I can skip down to the second
B paragraph. "A single hair recovered from the trousers was
not microscopically consistent with having come from Lin,
C Josie or Megan or the defendant. Subsequent mytochondrial
DNA analysis of the hair indicated that it may have
D originated from the same source as one of the hairs
E recovered from the sole of one of Josie's jelly shoes. So,"
F he explained, "the single hair on Lin's trousers was not
G Lin's, Josie's, Megan's or the defendant's and it may have
H come from the same source as one of the two hairs on one of
Josie's shoes.

Admission 3.18 at page 8, members of the jury. Sometimes it
is a little bit difficult to find these Admissions. If you
go to page 8, you will find this one. The top of the page.
"Four hairs were found on Josie's right shoe, two of which
were different from the hair of Lin, Josie or Megan
Russell. Full DNA profiling on these hairs was
unsuccessful, but partial mytochondrial DNA information
obtained from one of the hairs was sufficient to indicate
conclusively that the hair did not originate from Lin, Josie
or Megan or from the defendant and also suggested that each
of the two hairs was from a different source. The partial
mytochondrial DNA sequence, obtained from one of these two
hairs, was the same as the partial sequence obtained from a
single hair recovered from Lin's trousers and, therefore,

A may have originated from the same source." He said as to all
of that, that the fact that these four hairs on Josie's
right shoe were found at the scene does not mean that they
or any of them were left by the attacker. "They could," he
B said, "have been picked up at school or at swimming or
walking along the path or have been at the scene of the
crime before they entered it," though that was at the lower
end of probability. "A swimming gala changing room," he
C said, "is as fertile an area as you could get for hair
transfer apart from a hairdresser's."

D He then turned to fibres, members of the jury and I ask you
now to turn to page 6 if you would be good enough, to remind
you of the evidence here and it is Admission 3.14, the
second sentence of it or the third sentence. "Some red
fibres recovered from this item...." I will go back,
E members of the jury. This item is the white towel, forgive
me. The item referred to is a white towel. "Some red
fibres recovered from this item could not be linked to red
fibres found in items worn by Lin, Josie or Megan at the
F time of the attack or found in their home."

G Now no. 11, members of the jury, page 8. "Megan's
blue/green swimsuit was found 69.2 metres north from the
bodies in Cherry Garden Lane. No blood or semen was found
on it. A number of red cotton fibres found on the garment

A were different to fibres in the clothing worn by Lin, Josie
and Megan Russell or found in their home." "So," members of
the jury, commented the witness Mr. Mann, "those were red
fibres which were not from the victim's clothing, but the
B school colours were red and, again, the girl's changing room
would be a fertile ground," he said, "for transfer, even
more for fibres than for hairs. The fibres can also have
originated," he said, "from, for example, a red cotton
C T-shirt."

He was asked some questions about blood and about the strips
of towel. He said that the strips of towel were the
D dimensions that you would expect from one towel. "In my
opinion," he said, "at least some of the blood on the towel
was deposited after the towel was torn into strips."

E He was then asked, members of the jury, some questions about
lunch bags and we go back to the Admissions. Page 7,
please, this time, members of the jury. I am going to read
F sub-paragraphs 6 and 7. I have read them before, but I will
remind you of them again now in the context of this
witness's evidence. "Josie's lunch bag moderately
bloodstained on the outside surface, evidence that blood had
G been projected onto it. There was bloodstaining on the
green outside lid of the lunchbox inside the bag. A finger
mark was found in the blood on that lunchbox lid.

A Insufficient detail to be capable of identification.

B However, it included some low count loop pattern which couldn't have been made by the defendant, whereas it could have been made by Lin Russell who had such a pattern on her right middle finger." Paragraph 7, members of the jury, on the same page, "A finger mark in blood was found on the inside edge of Megan's lunch bag, but it contained insufficient detail to be capable of identification or even

C elimination of any individual. So," said Mr. Mann, "there was blood on the lid of Megan's lunch bag on both sides of the lid and there was bloodstaining inside Josie's lunch bag that may have seeped in with the bag open or closed. The

D bag was zipped up when found. There was bloodstaining on the outside of Josie's lunch bag, including splattered blood projected with some force, for example, from an attack to a head with a hammer. That could be a way of projection.

E Also, some bloodstaining inside the bag, but it could have come in from the outside," though he is less sure of that. "The green lid of the lunchbox," that is Josie's lunchbox, "there was a partial fingerprint found between the

F elephant's legs."

G Under cross-examination, he said this, members of the jury. "Typically, within about 24 hours, about 80% of transferred fibres will fall off if a garment is worn normally, but you'd be more likely to lose fibres in other circumstances,

A for example, if brushing through crops," walking through a
field of torn crops, members of the jury. He said, "I
B wasn't provided with another girl's pullover." That was a
reference to the little girl with whom Josie and Megan had
travelled from the swimming pool. "Four hairs were found,"
he said, "that could not have come from the victims. One
possibility," he said, "is that one or more was left by the
attacker." He agreed that none of the hairs found were from
C the defendant and he agreed, too, that there was no evidence
of ejaculation of semen at the scene.

D In re-examination, he said that "If a person ejaculates
inside his own clothing, you wouldn't necessarily expect to
find such evidence at the scene."

E Michael Pass gave evidence. He described himself as a
Principal Fingerprint Officer with 35 years' experience and
he spoke to you about the fingerprint found on the lid of
the lunchbox, Josie's lunchbox, and he produced a photograph
F of the mark between the legs of the elephant. You saw that
photograph, members of the jury. It is one of the exhibits
in the case and you will take it with you tomorrow when you
retire to consider your verdicts. "The finger," he said,
G "was pointing up towards the measuring tape that you can
see in the photograph." Do you remember, members of the
jury? In the picture of the photograph, there is a

A measuring tape. He said, "The finger that made that mark
was pointing up in that direction. It appears to me," he
said, "that it was a bloodied finger that made a mark, not a
finger going into wet blood already there. That's because
B blood does not go beyond the print. There were no reliable
ridge characteristics to be identified, so poor was the
quality. I envisage a bloodied finger going onto the lid,
moving and coming off again. I could see a pattern in the
C mark, a loop pattern. There are high count, medium count
and low count loop patterns and this was a low count one.
They're common. I examined the fingerprints of both Lin and
the defendant. Lin had a low count loop pattern on her
D right middle finger, so the pattern on the lid was
consistent with her right middle finger. The defendant had
no low count loop pattern, so he could not have made the
mark on the lid. There is also a finger mark on the inside
E of Megan's lunch bag. I couldn't tell whether it was a dry
finger going into blood or a bloodied finger and, anyway, I
could identify no pattern on it. There may have been one or
two ridge characteristics, but not enough to make an
F identification. I couldn't even tell in which way that
finger had been pointing. It is no use for either
identifying or eliminating anyone."

G A new topic, members of the jury: audibility in the cells
in the Segregation Unit at Canterbury Prison. You have the

A advantage of your direct experience. A number of prison officers gave evidence about this.

B Prison Officer Shrubsole. On the morning of 24th September 1997, he said Damien Daley asked to speak to him and pointed to the wall, indicating that Michael Stone in the next cell -- well, he indicated that the man in the next cell had been talking to him. The Governor was informed. In his C experience, he said, "communication does take place between cell and cell in the Segregation Unit" and the day after Daley had spoken to him, he and another officer spoke to D each other along the pipe, he thinks in Cells 2 and 3, having placed towels on the pipe and he said they could communicate clearly, without raising their voices, by facing E the wall that they were talking to. Well, members of the jury, that is agreed evidence. It has not been challenged or contradicted and if you accept it, you may think that it renders largely redundant all of the evidence about the mastic and flanges that follow it, because it tells you what F the audibility was like at the time that matters, but it is a matter entirely for you and I will remind you anyway of the evidence, quite complex though it was, of the mastic and the flanges. Presently I will do that.

G Gareth Davies was a Prison Governor no. 2. He said, on 24th September, he went to Daley's cell and Daley tried to usher

A him in, ran to the pipe and tried to tap on it to contact the prisoner in the next cell, but Mr. Davies ordered him away and Daley told him that Stone had spoken to him about his crimes.

B Prison Officer Reynolds said that he spoke to Daley on 24th September, who told him that Stone had repeatedly whispered to him about how he had committed the Chillenden murders.

C Prison Officer Whiteing, the Segregation Unit Officer, said that prisoners communicate in various ways, including along the pipe by putting their heads next to it and talking in the area of the pipe nearest the wall. He has seen it done.

D
E Prison Officer Twyman has worked as a senior officer on the Segregation Unit. He remembers flanges being fitted to the pipes. We know that that was about January 1997, members of the jury. "It was to stop tobacco and things like that being passed from cell to cell. Sometimes mastic was put into the gap between the expansion pipe and the heating pipe, but the inmates would pick it out and the practice would continue. The flanges were designed to prevent movement of items, not passage of sound." He has himself seen prisoners talk to each other along the pipe. "Prison officers only take notice of this," he said, "when voices

A are raised in aggression or because a key word, like 'keys' or the name of an officer, has been heard. The noise is constant," he said, "and there's only one officer on duty at night for the three floors."

B Prison Officer Brown confirmed the practice of talking along the pipe and that it could be done privately without being overheard.

C Prison Officer Kirtley, a senior officer in the Segregation Unit from 1996 to 2000, said that, "Flanges were fitted to stop the passing of contraband. A quarter-of-an-inch gap was left between the flange and the wall and communication between prisoners continued." Plasterwork around the expansion pipe was often damaged and he often saw prisoners communicating via the pipe.

D
E Anthony Westcott is a welder and his company fitted the flanges in January of 1997. "There was a gap," he said, "between the heating pipe and the expansion pipe. He did not fill in any holes in the plasterwork. There were some residue of mastic sticking to the pipe at that time, but only residue and he does not remember either himself or his mate, Mr. Lee, putting any mastic in. On 8th September this year, that is shortly after the trial had started, members of the jury, together with a Mr. Liddle, he moved the bed in

A Cell 3. In 1997, he had not moved the bed so he had had to
cut the flange to put it into place. You see evidence of
that in the photograph. Then, on 8th September this year,
B he began, together with his mate, to remove mastic from the
gap, some before and some after removing the flanges. Other
items also came out during this exercise, for example, a
plastic knife. He believes that the mastic was applied at
some time after the fitting of flanges in January 1997.

C
His colleague, Mr. Liddle, gave evidence. He, too, went to
the prison with Mr. Westcott on 8th September this year,
D moved the bed and removed the mastic from the aperture in
the wall where the pipe was. Sound tests were carried out
and the flanges were removed. After the removal of the
flanges, a lot more mastic was removed. A plastic knife and
E a biro came out of the aperture. In his opinion, too, the
mastic had been applied after the flanges were fitted. He
could see from Cell 2 to Cell 3 along the pipe he said.

F Thomas Hills is a craftsman who works in Canterbury Prison.
He remembers Mr. Westcott and his mate fitting the flanges
in January of 1997. That is some nine months, is it not,
members of the jury, before Mr. Daley and Mr. Stone were in
G the segregation cells? The flanges were not flush with the
wall and at some later time, he said, he put mastic in the
gaps. He said, "Prisoners do move mastic." On 14th August

A this year, that is two or three weeks, members of the jury,
before the trial began, he saw, in Cell 2, a triangular hole
in the wall giving access to the gap. That had not been
there, he said, when he put mastic in the gap. He did not
B mastic the gap at the left-hand side of the flange at all
because of the awkward position, that is in Cell 3, but he
did mastic the right-hand side, but it was later picked out
by inmates. He then said this, members of the jury, that
C contrary to his earlier belief, he now realised, from
photographs that he had seen in Album 1, that he had done no
work at all on the flanges until after November of 1997,
that is two months after Mr. Daley and Mr. Stone were in
D those cells, because those photographs were taken in that
month and show the condition of the flanges before he, Mr.
Hills, had done any work on them. If that is right, members
of the jury, there is no evidence of any mastic being put
into the wall between Cells 2 and 3 between January of 1997
when the flanges were fitted by the welders and the time
when Mr. Daley and Mr. Stone were in those cells. Rather a
E complex piece of evidence, members of the jury, but for the
F sake of completeness, I remind you of the mastic and flanges
evidence.

G Admissions 11 to 15, members of the jury. "The defendant
was remanded to Canterbury Prison on 22nd September 1997.
He then made a written request to the Governor that he be

A segregated from other prisoners which stated the reasons as,
B 'Because the press keeps putting it in the papers that I am
C a prime suspect in the Russell murders.' He then told the
D Acting Governor that he was concerned that inmates might
E allege that he had confessed to the crime. His request was
F granted to ensure good order and he was placed in the
G Segregation Unit the same day. Night staffing commences at
H 8 p.m. and consists thereafter of one officer only on duty."

Moving to 12, members of the jury. "The prisoners occupying
the two floors above the ground floor Segregation Unit would
have had access to a daily newspaper of their choice,
whether on remand or serving. The defendant, although
segregated, was not deprived of any privileges and was also
entitled to a newspaper of his choice. Prisoners on
Segregation normally have access to newspapers and the
prison records indicate that Daley was not banned from
having newspapers. Even if he had been banned, he may still
have been given a newspaper by prison staff overnight.
There is one prison purchased tabloid newspaper available
for the Segregation Unit and a further three newspapers
available for the upstairs floors which can be passed from
cell to cell by officers and sometimes using other means by
the prisoners. No records are available as to which
newspapers were provided to which prisoners in either the
segregation cells or the floors above on 22nd/23rd September

A '97. When asked recently as to whether the heating would
or not have been on on 23rd September '97, the prison has
indicated that the heating is switched on on 1st October
B unless the prison medical officer advises that it should be
turned on earlier due to the weather. Neither the prison
medical officer, nor officers contacted by the
C investigation, have any recollection of the heating being
turned on early in past years."

"Expert sound tests at the prison on 9th August 2001.
Experts instructed on behalf of the defence and prosecution
D carried out tests as to the audibility between Cells 2 and
3. These tests were carried out with the condition of the
heating pipe as found that day, the condition of the pipe at
its junction with the wall between Cells 2 and 3 being
E similar to that shown in the photographs, Exhibit 9, which
were taken on 29th August 2001. The heating pipe is
three-and-a-half inches in diameter and is set three inches
from the back wall, six inches above the floor." There is
F then a further description, members of the jury, of the
pipe. I need not go into that. You have seen it. "The
tests carried out by the experts indicated that speech
communication was only possible between the two cells by
G shouting and not at ordinary conversation levels and,
further, that at the level required for communication to
take place, the communication was more audible in the
H

A corridor outside the cells, with the cell doors closed, than inside.

B On 8th September, a series of further audibility tests
C between Cells 2 and 3 were carried out by the same experts
D whereby a talking book recording was played inside Cell 2 at
E such a level as was agreed by the experts to be intelligible
F inside Cell 3. For the first test, as much material as
G could be removed without disturbing the flanges or the wall
H was removed from between the flanges and the wall only. The
level at which the recording became audible in Cell 3, other
than if one ear was actually resting on the pipe, was high
enough to be able to hear via the doors in any event. With
an ear resting on the pipe, the level required in Cell 2 was
lower, but similar to that of a business office or quite
loud speech, less than a shout. For later tests, as much
material as could be removed from the pipe without
disturbing the flanges was removed. It was possible to
penetrate a little way into the lining only. The audibility
was much the same as for the first test. Finally, the
welded flanges were removed and sufficient further material
was removed from the lining pipe to leave a small clear air
path between the cells over part of the circumference of the
pipe. The flanges were then refitted, but not welded, in
position. Testing indicated that the lower level limit of
intelligibility, if the speaker was by the pipe alongside

A 8.30 in the morning, he went to an address in Gillingham with a Detective Sergeant Lamour and arrested the defendant on suspicion of the Chillenden murders and cautioned him.

B "The defendant said, 'I was in prison at that time' and later, 'I was unlucky I was in prison, well, I think I was' and later, 'I was in detox. I used to drive an Audi 80 but didn't drive then because of penalty points.'"

C Detective Sergeant Bowler gave evidence about the interviews and you remember, members of the jury, that there was a whole series of interviews, numerous interviews, from 18th July 1997 and onwards. At all times, the defendant had access to a legal adviser and an Appropriate Adult who were both present. The interviews were taped and transcribed and you then heard edited versions of transcripts of interviews on 18th, 19th and 20th July 1997 and 18th and 19th September 1997 and 20th October 1997. Summarised, members of the jury, there was a great deal of dialogue, was there not, about motor cars, possibly as much as half of the bulk or volume of the interviews, and the defendant admitted that he had owned numerous cars in the past two years of various makes and colours, but denied owning a beige one, though his mother had had, at one time, a grey or beige Ital which he denied using. He said his mother would not let him use it. He repeatedly denied having anything at all to do with the Chillenden murders. He denied ever arriving at Cheryl

A Batt's with blood on his T-shirt. "She was making it up,"
he said, "lying." He admitted going in a car to the
B Canterbury area about five years earlier with a brother of
his and one other person and going to the Ramsgate/Margate
area. He said that he had once been in a children's home in
Canterbury. He denied having a jogging top with a hood on
it. He said he had thrown all of his old clothes away,
C "They had gone." He admitted using tourniquets, but not,
at first, using a shoelace or a bootlace as one. Then he
said he might have used a white shoelace "once" and then he
said he might have used it "a few times." He did not
remember a black shoelace. He denied ever going to
D Chillenden or closer to it than Canterbury. He denied
talking to Daley. He remembered going to Cash Converters,
but not where he had gone afterwards, possibly to his own
E flat. You will not hold it against him, members of the
jury, that he does not remember going where he went
afterwards. It is a long time, is it not, between that date
and the interview? Many of us would find it exceedingly
F difficult to remember something as far back as 14 months
before or 12 months before. Daley's statement, he said, was
"a pack of lies." He had asked to go on the Segregation
G Unit because he feared other prisoners would say he
confessed to the crime. A bit more detail on all of that,
members of the jury. He admitted injecting heroin and using
a rubber tourniquet and sometimes a tie; "nothing else" he

A said. He said he had had a white Tercel up to August of
1996. Earlier, he had had a silver Audi, then a green
B Nissan. He had also had a red Nissan at one time and a red
C Mini and a lorry and a white van at various times and,
D indeed, a red Escort, but that was two years before. He
E denied carrying a hammer in his tool box in the car. He
F said any comparison of his hair to hair at the scene would
G prove to be negative. He denied that he knew the area of
H the murders or that he had heard of Goodnestone or
Nonington, but admitted having been in a children's home in
Canterbury. He said that his car went nowhere near
Canterbury on the day of the murders. He denied ever having
a beige car. He said that he had been told he had a
photograph taken on 13th July 1996 which showed him with a
beard. He denied having a top with a hood. He could not
remember such a garment. Sheree Batt, he said, was a liar
and they were not on the best of terms. After November
1996, he had thrown all his old clothes away. He had not
watched Crimewatch about the Russell murders, but had heard
that one girl was in a coma. He denied giving Sylvia Beard
a lift in a red car that had no glove box. Asked about the
tourniquets again, he denied ever using a shoelace, then
said he may have used one "once" and then "about three
times," a white one. He denied ever going to Chillenden or
closer to it than this side of Canterbury, that would be the
west side of Canterbury to him, members of the jury, or

A doing the Chillenden murders. He denied talking to Daley in
Canterbury Prison, agreed that other prisoners had shouted
B abuse at him. Daley's statement, he said, was "a pack of
lies." Daley had threatened to get him in the exercise
yard. That is a summary, I hope a helpful summary, members
of the jury, of the contents of the interviews.

C The officer was asked further questions by Mr. Sweeney. He
said, "We never saw a diary of the defendant's and the
defendant was not in prison at the time of the murders."

D Detective Constable Phippin, on 20th October 1997, at
four-minutes-past-six in the evening, charged the defendant
with the murders of Lin and Megan and the attempted murder
of Josie and, under caution, he said "No, no comment."

E Inspector Neilson gave evidence and told you that in 1997,
he was one of two identification officers for the Kent
F Constabulary specialising in identity parades and he was in
charge of the arrangements for the identification parades in
this case. On Saturday, 20th September 1997, there was a
parade on which the defendant stood. His solicitor was
G there and an Appropriate Adult. It was videotaped. There
was a one-way glass screen. The witnesses could not be seen
by those standing. Appropriate notices were served and he
said that he recorded the proceedings on a pro forma; that

A is a sheet of paper, members of the jury, pretyped. Nine volunteers were selected and the defendant did not object to any of them. He chose position no. 7, wearing clean jeans and a white T-shirt.

B Nichola Burchell was the first to view the parade. She had not seen any photograph or E-fit since September -- since C July, forgive me, of 1996. She was told that she was there to see if she could identify the driver of the beige car that she had seen on 9th July 1996 at about 4.40. "She was asked to walk up and down the glass screen at least twice and look at each person at least twice and that if she could not make a positive identification, she should say so. She D walked up and down as asked. She stopped opposite no.'s 7 and 8 a considerable time. They were about 6ft. away. She then said, 'I'm not sure.' I said, 'So you can't make a E positive identification. Can you make any form of identification?' She said, 'No. 7 looks very familiar. I don't know why. There is just something about him.' She then left. I asked the defendant if he wanted to change his F position. He said, 'No.'"

G "The next identifying witness was Josie. I asked her the same questions and gave the same directions and the same procedure was followed. She walked very quickly up and down twice. She said 'No' to the question whether she could

A identify anybody. She then left. I then asked the
defendant if he had any comments or complaints. He said
'No.' He, his solicitor, the Appropriate Adult and I then
went to a room where I told him that Josie had not picked
B him out and what Nichola Burchell had said. He then had the
chance to consult his solicitor."

C The final witness for today, members of the jury, Detective
Superintendent Stevens. He was the Senior Investigating
Officer from the time of the murder. He said, "We decided
that we would tell the media that an identification parade
had taken place, but we decided not to tell them who had
D attended or what the result of the parade had been. The
Daily Mirror, on 23rd September 1997, was indicating that
Josie had attended, but did not give the result." He said,
"There has been no communication between us with Daley
E about the audibility in Cells 2 and 3 being an issue" and
that he was aware of the court order to ban any media report
of the jury's view of the cells at Canterbury Prison until
F after Damien Daley had given his evidence. He said,
"There's one officer on duty at night in the Segregation
Unit and he's based in the office on the first floor. He
does two trips round the Unit every hour." He was asked
G about the four hairs on Josie's shoe and produced a
photograph. There is an arrow on it showing where the two
hairs were adhering to the sole of the shoe at the front.

A He repeated what we had already been told by an expert, that
those hairs did not match Lin, Josie, Megan or the
defendant. The other two hairs matched ST1, two other
B hairs, matched Josie, her mother or sister. Their position
is also marked adhering to the sole of the shoe at the
side.

C Cross-examined, he said that Calder had made a statement to
the police and had claimed that Daley had blood on his jeans
-- forgive me, that the defendant had blood on his jeans, I
make that clear, members of the jury, had blood on his
D jeans, on the day he had visited the house. Members of the
jury, I remind you again: you did not hear evidence from
Calder and you are not to give any weight to that material
in considering whether there was, in fact, blood on the
E defendant's jeans on that date. I gave you directions
earlier on why that material was introduced into the case by
the defence. He said that there were numerous sightings of
F vehicles and people in the area that day and some of them
were not eliminated. He said, "That's unremarkable and is
what usually happens" and he gave some examples. He said
there were two sightings of a beige vehicle in Buckland
G Lane. At ten-to-four, a witness had seen one between two
lanes called Staple Lane and Cave Lane nearby. The driver
of that was fair-haired. Another beige vehicle was seen by
another witness going towards Staple at about 4.20 or 4.35.

A There was no description of that driver. At about 3.30,
three youths were seen near a junction with Love Lane in the
centre of the plan. They were in their late teens to early
B 20's. They were thought to be ramblers. They had maps with
them. At 4.15 to 4.30 on the Sandwich Road, there was a
sighting of another man. That was the one reported by Mr.
C Jackson, the witness who collects scrap from local dumps. A
male person was sighted at ten-to-six coming out of Cherry
Garden Lane on a bicycle. At 5.30, a white teenager was
seen wheeling a cycle in Cave Lane. Members of the jury, no
D doubt people were moving about the area at these times and
at all other times and you may think that there are perhaps
very few acres of south eastern England where they are not,
but it is a matter entirely for you.

E Members of the jury, that is as far as I am going to go this
afternoon. Tomorrow morning I am going to remind you of the
arguments of both prosecution and defence and then you will
be asked to retire to consider your verdicts. Do not
F discuss the case at all with anybody overnight or hereafter
until the case is all over. Thank you.

(In the absence of the jury)

MR. JUSTICE POOLE: Any matters that counsel wish to raise?

G MR. CLEGG: My Lord, no.

MR. JUSTICE POOLE: I will rise.

(Adjourned until 10 a.m on 3rd October 2001)

3rd October 2001

SUMMING-UP (Continued)

MR. JUSTICE POOLE: One matter of detail, members of the jury.

Damien Daley said in evidence that in the cell, he had begun to read an article about "a girl getting a bravery award or something." The Mirror article said, and I quote: "A police source said that she was very brave. It must have been a big ordeal." The defence submit that this suggests that Daley had read or heard elsewhere about an award for Josie. The prosecution, on the other hand, submit that what Daley said was consistent with what he had just read in the Mirror. It is a matter for you.

I now summarise, members of the jury, the arguments of prosecution and defence.

First, the prosecution. Mr. Sweeney said that there is no dispute but that Lin and Megan were murdered and that there was an attempt to murder Josie; therefore, the central issue, the sole issue, is whether the defendant did it. The burden of proof is, of course, on the Crown throughout, not on the defendant and the three counts stand or fall together he reminded you. The principal evidence is that the defendant admitted the murders to Daley.

Mr. Sweeney then reminded you of the detail of Daley's

A account of the confession, "smashing or breaking eggs,
inside being mush, I'd have been okay if that slag hadn't
picked me out" and Mr. Sweeney reminded you that the police
B kept Miss Burchell's reaction to no. 7 to themselves. It
was not in the media. Tying people up with wet towels.
"Short lace" or "shoelace." The condition, you are
reminded by Mr. Sweeney, of the lace was consistent with a
tourniquet of the type that the defendant used. "One girl
C disobedient, but not get far. They did not have what he
wanted. Paupers. Dog made more noise than they did. Made
someone watch, but she closed her eyes. Sniffing costume,
being aroused by it and having, or nearly having, orgasm."

D Against that background, you are asked by Mr. Sweeney: has
he really invented an account as detailed as that? He asks
this question: "Why should Daley, a deeply
anti-authoritarian character, give evidence for the
E prosecution? What is the motive? What is the gain to him?
Why was he upset the following day?"

F In addition to Daley, he submits there is circumstantial
evidence. Though there is no positive evidence of
identification, there is, he submits, the broad consistency
with the Burchell E-fit which Josie says is the attacker,
G there is the defendant's local knowledge, the attacker had a
hammer - the defendant habitually had a hammer in his cars -
there is the bootlace tourniquet indicating that the killer

A was an intravenous drugs abuser, as, indeed, was the
defendant, the killer must have had some blood on him and in
that regard, he points to the evidence of Sheree Batt, the
killer would be aware of the risks of leaving a trace at the
B scene of crime, the defendant got rid of all his clothing.
There were lies on six topics submits Mr. Sweeney: his
knowledge of the area, he pretended he had none, the hammer,
his claim not to carry them in vehicles, the frequency of
C his use of bootlace tourniquets, his claim to have no hooded
top, if you accept the evidence of Batt about the blood on
the T-shirt, he has lied in denying that, too, and, finally,
the lie in interview that he was telling the truth. Why,
D asks Mr. Sweeney, did he tell these lies? He did not give
evidence so we cannot test why he has lied, he submits, but
you can ask yourselves. Of course, it is right that people
lie for many reasons. The circumstantial evidence by
E itself, he concedes, is not enough for a conviction; you
must be sure that he confessed to Daley, but he submits you
should take the circumstantial evidence firmly into account
because it confirms, he submits, Daley's evidence.

F
G In anticipation, he said that the defence may rely on a
number of arguments. As to those, he says that it is
inevitable that there would be loose ends of the sightings
at the scene at or about the time of the killings that the
police cannot entirely eliminate. What, he asks, is the

relevance of ramblers or men with bicycles? The undisputed evidence is that the attacker was one man in a car. Identification, he says, is a difficult area for any witness, let alone for one in Josie's position. Timing is another difficult area. He submits that Miss Burchell and Mr. Rayfield are the two crucial witnesses as to the period immediately after the killings. The man that Mr. Rayfield saw at five-past or ten-past-five must, he submits, have been the attacker. His car was a beige Escort-type vehicle. At about 4.43, Miss Burchell saw a beige Escort-type vehicle emerge from Station Road and, thereafter, the driver of it constantly looked at her in his wing mirror. She said that her E-fit was "really good, 90% accurate." As soon as Josie saw the E-fit, she said it was him. "Why," asks Mr. Sweeney, "was the man there? You cannot even see Mt. Ephraim or the house at Mt. Ephraim from the track, let alone from Buckland Lane." So, he submits, this is a man who must have known the area well, he was up to no good, possibly had burglary in mind and his motive in approaching the Russells was robbery. He left behind a bootlace by mistake. At Rowling Court, was he weighing up the risk of going back for it or possibly trying to spot somebody else? Mrs. Rotvik, at about ten-to-five, saw a beige Escort-type vehicle near Rowling Court with a white driver, aged 30 or 40, and Mr. Jackson, the scrap dealer, saw a car and a man near the tree at Rowling Court at about

A 5 o'clock or five-past, whilst Mrs. Cole saw a man with a
hammer near the windmill at about quarter-to-five. The
defence will say he submits, first of all, that there is no
positive identification of the defendant as the attacker.
B As to that, he submits only two witnesses attended the
parade. Josie had already been saying for a long time that
she no longer remembered what the attacker looked like.
C Miss Burchell said, "I'm not sure. No. 7 looks very
familiar." As to the car, the defendant was seen in a white
Tercel on 5th July by the police and again on 16th July.
D What Burchell and Rayfield saw was not a white Tercel, but
there is some evidence, submits Mr. Sweeney, that the
defendant had a beige car in summer of 1996 or access to
one. That evidence comes from Ella Styles. The defendant,
in interview, denied having one. It is the case, submits
E Mr. Sweeney, that he had access to numerous cars and an
incentive to use something other than the Tercel on this
expedition if it was a criminal expedition.

F He turned to fingerprints. The fingerprint on Megan's lunch
bag is useless; it cannot be used for identification or
elimination. He then made submissions about the fingerprint
on Josie's lunchbox. It was consistent, he said, with Lin's
G bloodied right middle finger going onto the lid. No ridges
were identified, but a low count loop pattern was. The
defendant does not have one, but Lin does, so she could

A easily have touched the box with a bloodied finger. Lin's
B blood spots were found outside the scene in the copse
C itself, on the track, suggesting that Lin was the first
victim or an early victim on the track itself, he submitted,
D before she was tied up in the copse. A trace-conscious
E attacker, submitted Mr. Sweeney, would naturally get her to
F open the box and this could well have happened after a first
G blow to the head which she then clutched with her hand. Her
H right hand, when she was found, was bloodstained. "It is
true that Josie has a recollection of the man looking
through the lunch bag, but does that fit the whole picture?"
asks Mr. Sweeney.

He turned to the four extraneous hairs that are not the
defendant's and submits that that does not begin to mean
that they or any of them are the attacker's. Mitochondrial
DNA work shows that the hairs came from two or three
different people. The changing room at the swimming gala
was a fertile ground for transfer or possibly a hug at
school. The red fibres, he submits, do not help at all,
they are common and again there is the "changing room
factor" and he reminds you that the Goodnestone school
colours are red.

He turned to matters of consistency: the E-fit, a broad
similarity of appearance, the local knowledge, the hammer,

A the drug user, the tourniquet and the evidence of Mr. Ide
and Mr. Smith suggests that it was precisely that, a
tourniquet. The defendant admitted in interview that he was
B "badly on drugs" at the material time. Do not hold that
against him as such, reminds Mr. Sweeney. There was
unchallenged evidence from Scott Hayes and others that the
defendant used a shoelace with knots in it as a tourniquet.

C He turned to Sheree Batt's evidence. He warned you, as
indeed do I, to approach her evidence with care because she
is only approximate about the date. The defendant in
D interview asked this rhetorical question: why would he not
get changed before going to Batt's? But was this, asks Mr.
Sweeney, just another example of his cavalier attitude? He
had a top with a hood on it over the T-shirt. She happened
E to spot the blood from the neck down because the zip was
open there. You heard something about what Calder had said
about blood on the trousers. That is not evidence that it
was so. Neither side has called him. He turned to lies,
F but before turning to lies, he said that no comparisons had
been possible so far as clothing is concerned because the
defendant's clothing has gone.

G Reminding you of the evidence of lies, he reminded you of
the knowledge of the area and he took you to the plan of the
area, pointing out that all the places that the defendant

A admitted in interview going to were outside the box that
appears in the east coast -- in the eastern area of Kent and
he took you to pages 39 to 41 if you would turn them up,
members of the jury, of the defendant's interviews. The
B bottom of page 39: "(A.) Yeah, but I don't know the area"
and then page 40, three or four inches down, the officer
says, "(Q.) I'm trying to think of a few other places you
may have heard of then. Err, Nonington? (A.) No. (Q.)
C Goodnestone? (A.) No. No, tell you the only places I know
down there are Fannock Without and Fannington Without."
Then on the same theme, page 90 of the interviews, members
of the jury, you were also taken to by Mr. Sweeney, where
D the defendant said in interview, "(A.) I ain't never been to
Chillenden. I've never been to Chillenden. I haven't done
these Chillenden murders, these Chillenden murders, these
Russell murders. I never went down to Chillenden. I didn't
E go anywhere near it. The closest I've ever been to
Chillenden is when I went this side of Canterbury with my
brother." Well, he asks you to contrast that with the clear
F admission that was made in writing and he submits that all
of what appears at pages 39 and 40 and, again page 90 of the
interviews, is utter nonsense and, as he put it, "a
whopper." Again, as to the hammer, he denied carrying a
G hammer in his tool box, but a clear admission to that effect
is before you. The bootlace tourniquet. Several witnesses
say he used one and he was reluctant to admit that, submits

A Mr. Sweeney, in interview. The hooded top. A number of
witnesses attest he had a number of hooded tops. He denied
B having any in interview. Blood on the T-shirt. If you
accept Batt, he is lying in saying he had no blood on him
and his protestation of telling the truth itself is a lie,
submits Mr. Sweeney.

C He turned to the arrest and what followed. First of all, he
had told the police he had been in prison at the material
time, said that he owned an Audi 80 and would not have
D driven it at the material time. He was then remanded on the
22nd September to Canterbury Prison. Mr. Sweeney said that
it would be said that there is a contradiction between his
reason for wanting to go into the Segregation Unit and then,
E shortly afterwards, his confessing to Damien Daley, but,
again, he said, consider his cavalier attitude and his
telling Daley that nobody would believe him. It was pure
F chance that put the two of them together. Can Daley
possibly, asks Mr. Sweeney, have prepared himself to fit up
in detail a man whom he had no reason at all to believe
would be put in the next cell? He says that you should take
Daley "warts and all." He is a crook; that is why he was in
G prison, that is why he was in the Segregation Unit. He is a
man who lies when it suits him. He does not like people who
attack women and children. He admitted telling a lie about
H himself at the last hearing in denying, what he later

A admitted, namely that he had taken an opiate tablet in prison, but accepting all of that, he submits that he is a witness that you can accept.

B On the question of audibility in the cell, he said that you have been to the scene, it is difficult precisely to reconstruct the conditions of 1997, but there is a mass of undisputed evidence, he submitted, from the prison officers about the audibility at the time. It was common for C prisoners to talk to each other in this way. In the light of that, the evidence about the flanges and the mastic makes D little or no difference. He submits that your impressions when you were in the cell will have tallied with Daley's account of what can and cannot be heard. He asks you to consider the detail of Daley's account, including his E account of the confession and ask this question: has Daley really "boned up" on the detail or has he got it right because that is what the defendant told him? He submitted, finally, that all of Daley's account fits, both with what F was at the scene and with what happened on the parade, and that there is not a whiff of an improper incentive for Daley. That closed his submissions.

G Mr. Clegg replied on behalf of the defence. He submitted that the prosecution case "beggars belief." The defendant asked to be put into the Segregation Unit in order to

A protect himself from false stories of a confession and yet
hours later, here he is confessing to the man nextdoor say
the prosecution and nothing in the confession that could not
be gleaned from the media. The case hinges on Daley, he
B said, a criminal and a proven liar who lied to the last
jury. Consciously or unconsciously you may want him to be
guilty, but nobody knows the truth. You have to work it
out.

C He conceded that the defendant is an unattractive type, a
drugs abuser, but he is entitled to the same quality of
D justice as anybody else and Mr. Clegg asked you to remember
that and, of course, to give him a fair trial and reminded
you that you must strive against what may be an unconscious
desire to believe him guilty.

E He went on to submit that on a close examination of the
evidence, the prosecution case falls apart. "Who was the
murderer?" he asks. It was one person acting alone. For
F that, you have the evidence of Josie, Burchell, Mrs. Cole,
Mr. Jackson and Mr. Rayfield. The timings of the various
sightings are consistent with each other. The murderer did
not leave the area for about an hour. The defendant living
G in the Medway Towns, 52 minutes away, had plenty of time to
get home during this time, so do not the circumstances, asks
Mr. Clegg, point to its being a local man? The bag and the

towel strips were a trophy to be gloated over, but the killer changed his mind and dumped them and Mr. Clegg submits that he, the killer, must have walked across the field from Rowling Court to the windmill, so that the man seen by Mrs. Cole was the same man who was seen by the beige car by Mr. Rayfield. Both Mr. Rayfield and Miss Burchell saw a beige Escort-type car and they also saw the murderer. Miss Burchell is an observant woman and the defence relies on her evidence. In all, five people saw the murderer. They give various ages and heights and descriptions. Josie said, at first, that his car was red and she was clearly wrong about that. The bootlace makes it very probable that the murderer was an intravenous drugs user. Now, asks Mr. Clegg, who is Michael Stone? He makes this point, members of the jury, and it is one to which you should give full weight: the police were not going to arrest a black clergyman for this, they were always going to arrest a white intravenous drugs user, one very possibly living in the east to central Kent area. The question is have they arrested the right white intravenous drugs user? There are lots of them. So, he submits, the consistency argument is a hollow one. Obviously, he submits, the defendant cannot be expected to remember where he had been 14 months earlier.

He was interviewed for days and to some direct questions he did not tell the truth, but you ought to be realistic about

A that, submits Mr. Clegg. For example, he had been told that
the victims had been murdered with a hammer. An innocent
man, just as well as a guilty one, might be likely to lie in
such circumstances. You all know from common experience
B that children, for example, lie when facing trouble, but so
do adults. He submits that there are three prosecution
theories, all of which can be destroyed: one, that the
C murderer was on a criminal enterprise, two, that he was
possibly not alone and, third, that the murderer was
forensically aware. None of these theories, he submits, is
supported by the evidence. There is no evidence of a
D criminal enterprise, for example, a burglary. The murderer
may well have turned off the road in order to inject. There
was no need for him to commit multiple murder in order to
steal. It is the prosecution who are saying that because he
E was on a criminal enterprise, he went in somebody else's car
because they have a problem about the car. There is no
evidence, he says, to support the theory that he was not at
all times alone. Nobody, he submits, would commit a crime
F like this with a partner nearby; the partner might talk.
The theory is that he left the bootlace and wanted to
retrieve it. Somebody forensically aware would not have
left the tights or the jelly shoes or have moved the
G bodies. The killer's car was butterscotch/beige and an
Escort-type and Mr. Clegg submits that the prosecution has a
huge problem here because Michael Stone had no such car. He

A had one car, a white Tercel which has no boot and which you
can see in photographs 56 and following. That is
B emphatically not, says Mr. Clegg, the car that Miss Burchell
saw. There were no flaps, no GB sticker, no red anti-static
strip. Furthermore, scientific examination of the Tercel
found nothing incriminating. Bowler was wrong in saying in
interview that Burchell saw a white hatchback. The
C defendant certainly had a Tercel between the -- well, he
submitted that the defendant had a Tercel between 3rd May
and 13th June. Indeed, he certainly had it on 5th July and
16th July as is agreed by both sides and as he indicated in
interview and as appears in the Admissions. So, submits Mr.
D Clegg, the beige car is a very important piece of evidence
and one that favours the defendant who did not have one.

E Josie did not identify the defendant at the parade or on
video and Burchell did not identify the defendant. She did
not say that he reminded her of the driver, but "of
someone," so nobody identifies the defendant.

F Descriptions. Burchell says that the hair of the man she
saw was "short, gelled, flicked up." Josie says that the
hair was "spiky." He asks you to compare or contrast that
G with the photograph Exhibit no. 14 which was taken in July
1996 and to compare it with the E-fit - it is a matter for
you. He submits that there will be thousands of people who

A look like the E-fit. There is no evidence, he reminds you,
connecting the crime scene to the defendant, for example, a
fingerprint or DNA. The print on Josie's lunch bag -- box,
B cannot be his because of the loop. Lin had a loop, so it
could be her print or the murderer's. If the latter, it
cannot be the defendant. Lin had her hands tied probably
C behind her back. She could not have touched the lunchbox
after that. The ligature on Lin's right wrist suggested
that the assault had occurred when she was tied.
D Furthermore, Josie says, "I think the man opened the
lunchbox. I don't know if I saw it happening. I think he
did. I saw the man look in them. I don't know where. Then
I didn't see him with the lunchboxes. Then I think he
E looked in the lunchboxes first" and then, "Yeah" to the
question, "Did he look through your lunchboxes?" She does
not at any time say that Lin went through the lunchboxes.

F He turns to the evidence of the hairs. The single hair on
Lin's T-shirt was not hers, nor Josie's, nor Megan's, nor
the defendant's, nor was the hair on her trousers either
hers, Josie's, Megan's or the defendant's. Of the four
G hairs on Josie's right shoe, none matched the defendant, so
there is no hair at the scene matching the defendant. You
are reminded by Mr. Clegg that in his interview at page 23,
the defendant boldly predicted that the DNA results will
H decide whether he did it and at pages 34 and 35, he invited

A the police to take his blood and told that his hair, that
his hair, was virtually identical with hair found at the
scene - which was the information the police had at that
point - he expressed confidence that the test result would
B show that the hair was not his.

C Turning to knowledge of the area, Mr. Clegg submitted that
the fact that he knew the area enough to navigate around it
or to give directions around it does not mean that he knew
the names of villages or other places. He points to page 30
of the interview where the defendant tried, unsuccessfully,
D to remember fully where he had been in the week of the
murders. It is hardly surprising, he submits, that he could
not remember at all times where he was. At page 37, Mr.
Clegg mentioned the defendant said that he believed the
E murderer wore a balaclava. Well, was that an act or does it
show his genuine ignorance of the crime?

F Turning to tourniquets, he said the witnesses mentioned a
variety of tourniquets used by the defendant and five of
them mention a lace, but none of them mentions a "black
lace." It is true, said Mr. Clegg, that all of the
G defendant's clothes had gone, but he had put six to eight
inches around the waist and there was no evidence to
contradict that claim.

A Turning to Sheree Batt, he said that Miss Burchell saw the
murderer in a bright red T-shirt. Batt said that the
defendant's bloodied T-shirt was white or grey. So, either
Batt is not telling the truth or she is describing something
B unrelated to the murders. Furthermore, (a) she failed to
connect the bloodied T-shirt with the Chillenden murders at
the time, and, (b) she said at first that the defendant was
wearing "stone-washed jeans" and did not mention any blood
C in connection with them. Calder was to say that the
defendant did have blood on his jeans. So, submits Mr.
Clegg, when she later said, "I never looked at his jeans, I
D meant he normally wears such jeans" and that, suggests Mr.
Clegg, is evidence of collusion. In his interview, you are
reminded the defendant strongly denied Sheree Batt's
account, said he was not daft, he would have changed his
E clothing had it been necessary.

Turning to Damien Daley, he reminds you that as a matter of
law, you cannot return a verdict of "Guilty" unless you are
F sure he is telling the truth, but, submits Mr. Clegg, he is
lying: (a) he said he had read about a girl in the article
in the Mirror getting a 'bravery award.' She did get an
award, but it is not in the article. Well, I have already
G given you a direction about that, members of the jury. How,
he asks, did he know that the defendant's name was Michael
Stone or Stow? Or had he heard it from the shouted abuse?

A Has he transposed the word "pauper" to the confession? Mr.
Clegg submits that it is a word that he would himself never
use. Well, you consider that submission, members of the
B jury. Is it a rare word or is it, in fact, a word in common
use and a common tabloid newspaper word? After all, it does
appear at least twice in that very edition. It is a matter
entirely for you. He told you he had taken heroin in
C prison, but in the last trial he agreed he had lied to the
jury about that. Mr. Clegg further submits that he lied
about his reputation as a "hard man" in prison. He points
to the difference between having an orgasm and nearly having
D one and to the fact that in his statement to the police, he
put it somewhat differently, namely, "I'd had the greatest
fucking orgasm in my life" and submits that that is evidence
of inconsistency and unreliability.

E On audibility in the cells, he said it takes some enthusiasm
on both sides to communicate through the pipe. "We do not
say it is impossible," he said, "but it is difficult to
F communicate and to Reynolds, Daley said the defendant had
'whispered' about the Chillenden murders." Page 96 of his
interview, the defendant said that Daley's statement was "a
G pack of lies." There is nothing new in Daley's account and
you are pointed in that context by Mr. Clegg to Admission
10. Mr. Clegg submits that Daley would deduce from the
Mirror article that Josie had picked the defendant out on

A parade. Ask yourselves, members of the jury - and it is for you to decide - could he possibly deduce that from the article? Suggested reasons for Daley lying include to gain credit with his peers or with the police, suggests Mr.

B Clegg.

C The defendant has not given evidence, but he reminds you correctly that no adverse inference is to be drawn from that. He has given his account in interview. Part of that account is lies concedes Mr. Clegg and that makes it difficult, he submits, for him to give evidence; he would be tied up in knots in ten minutes.

D He reminds you, finally, of these two matters, that Daley admitted he was a crook and that the defendant said throughout his interview that Daley's account was "a pack of lies."

E That, members of the jury, concludes my summary of the two arguments.

F Members of the jury, I am going to ask you in just a moment to retire and to consider your verdicts. You have probably heard that in some circumstances it is possible for a court to accept a majority verdict, that is to say a verdict that is not the verdict of you all. Those circumstances have not

A arisen in this case and they will not arise unless and until
I give you further directions. Is that clear? So when the
B jury bailiffs have been sworn, I am going to ask you to
retire and to strive to reach verdicts that are the verdicts
of you all. You might find it convenient, first of all, to
appoint a Foreman or Forewoman to act as spokesperson on
your behalf and you may take, of course, with you all the
C exhibits that have been provided by the court. Thank you.

(Jury bailiffs Sworn)

(The jury retired at 10.40 a.m.)

(Later - in the absence of the jury)

D MR. JUSTICE POOLE: Mr. Sweeney and Mr. Clegg, I have had a
question from the jury. You have seen it, I know, but I
will read it out: "We require clarification on paragraph 10
in the Admitted Facts. The statement implies that all parts
E of the alleged confession were in the public domain or could
be deduced from items in the public domain, but prosecution
asserts that only the defendant knew that he had been picked
on the ID Parade which contradicts the Admitted Fact. So
F how much of the alleged confession is agreed to be in the
public domain or deducible therefrom? E.g. tried to run
away, dog present, etc.. Following on, was it made clear to
G Stone that a female, i.e. Nichola Burchell, identified him
in the identity parade or just a witness?" I am going to
invite comment from both of you, of course, and subject to
that comment, my proposed answer to the jury would be as

A follows. First of all, I would read out Admission no. 10.
B Secondly, I would say it is agreed that all of the facts
contained in the alleged confession were either in the
public domain or capable of being deduced from facts in the
C public domain. That would include tried to run away and dog
present. Thirdly, it was made clear to the defendant that a
female had identified him on the identity parade, not just
the witness. As to that, I shall need clarification and
confirmation. Shall I invite comment from Mr. Sweeney
first, Mr. Clegg?

MR. CLEGG: My Lord, certainly.

D MR. SWEENEY: Mr. Stevens gave evidence designed to supplement
Admission no. 10 in which he told the jury that there had
been a deliberate decision to hold back the result of the
identity parade from the media.

E MR. JUSTICE POOLE: To hold back the identity parade?

MR. SWEENEY: To hold back the result---

MR. JUSTICE POOLE: The result, yes.

F MR. SWEENEY: --- Of the identity parade from the media and that
having looked at the newspapers for the period between the
parade and the alleged confession, that there was no
reporting of the result of the parade. Inspector Neilson's
evidence was in the form of agreed leading question and
G confirmatory answer, that the defendant after the parade was
told that Josie Russell had not identified anyone and that
Nichola Burchell had picked him out from the group and that

A the officer had quoted the words she used to the defendant.
MR. JUSTICE POOLE: Put it to the defendant the words she used,
yes.

B MR. SWEENEY: Yes. The important aspect being that that agreed
leading question reflected that he was told that Nichola
Burchell had picked him out.

MR. JUSTICE POOLE: Yes.

C MR. SWEENEY: The position, therefore, is that Mr. Clegg has
concentrated his mind, insofar as the identification parade
is concerned, necessarily on the assertion that it was
capable of deduction that a female to which Josie, he
D argues, had picked out the defendant, whereas it is our case
that in relation to that fact, it was not in the public
domain and the ease or otherwise with which it could have
E been deduced from what was in the public domain is a matter
for comment between the parties.

MR. JUSTICE POOLE: Your penultimate paragraph there was that
"Mr. Clegg asserted that it was capable of deduction from
the Mirror article that Josie had picked him out."

F MR. SWEENEY: Well, that is what he said in his closing speech.

MR. JUSTICE POOLE: It is.

G MR. SWEENEY: Admission 10 itself explains, in its second
sentence, the context in which the first sentence is made.
Beyond that, it is not possible to go, evidentially on what
the jury heard, other than the extent to which the
H combination of Mr. Stevens and Mr. Neilson narrows down the

A identity parade part of the issue.

MR. JUSTICE POOLE: Yes, thank you. Mr. Clegg.

B MR. CLEGG: My Lord, I agree with what my Lord indicated you
C were proposing to say to the jury by way of answer to their
D question. As to going further, the second sentence of
E Admission 10 is not intended at all to go behind the first
F sentence of Admission 10 and would certainly never have been
G made by me if anyone was to so suggest. It is illustrative
H of the information that was in the public domain, no more
than that. So my Lord is absolutely right, we submit, when
you say that, for example, by reference to the jury's note,
"tried to run away," "dog present," are facts that it is
agreed were in the public domain or capable of being deduced
from facts in the public domain. They had been, of course,
as we know - and there has been evidence of it -
reconstructions of the crime broadcast on television,
although the jury have not been told or seen them, but they
have been told about Crimewatch.

MR. JUSTICE POOLE: Which included, for example, those two
features?

MR. CLEGG: My Lord, I am not able to give evidence about that.
In my own mind.... Well, I am not actually prepared to
actaully commit myself.

G MR. JUSTICE POOLE: You do not have to answer that. You are
addressing me, quite rightly, on the terms of Admission 10.

MR. CLEGG: But certainly its whole purpose was to be

A all-embracing. Now certainly it covers also the fact of the identification parade and the picking out.

MR. JUSTICE POOLE: One moment. Well, is that a fact that is contained in a confession?

B MR. CLEGG: It is certainly a fact that is included or contained in the conversation through the wall that all have referred to as, in an all-embracing way, "the confession."

C MR. JUSTICE POOLE: But it is the prosecution's case in terms that that was not in the public domain, is it not?

MR. CLEGG: I agree.

MR. JUSTICE POOLE: It is in those terms that Mr. Sweeney has addressed the jury.

D MR. CLEGG: My Lord, I was just coming on to concede that. The evidence is that that was a fact that was not in the public domain and the evidence of Chief Superintendant Stevens is clear as to that point. He has personally looked at every paper and every news broadcast and listened to each radio broadcast to confirm that that is so and we accept that, but we submit that the Admission is clear, that the fact that he had been picked out, rather than, as the note incorrectly states, "identified" on the parade, was something that was capable of being deduced from that which was in the public domain.

E
F
G MR. JUSTICE POOLE: Namely what?

MR. CLEGG: We have submitted to the jury that it is capable of being deduced from the article itself.

A MR. JUSTICE POOLE: Yes, I appreciate that, which is in their
hands, is it not?

B MR. CLEGG: Which is in their hands, but, of course, we do not
restrict ourselves to that, because we have managed to place
C before the jury evidence which makes it clear that Daley had
potential access to other newspapers from both upstairs and
on the Segregation block and that other papers may well have
also reported the effect of the parade in a way that also
D made that deduction possible, but because the Admission is
in clear terms - namely, that the fact was capable of being
deduced from facts in the public domain - it has not, for
example, been necessary to place all the papers and other
E information before the jury in order for them to, as it
were, form an independent view as to that. The limit, we
submit, or at any rate the proper limit of Mr. Sweeney's
F stance with the jury - which we do not suggest he exceeded -
was to suggest that this particular paper would not or may
not, by itself, have allowed the deduction to be made and he
has made that submission, I have made a contrary one, but
that is quite different from seeking to suggest that the
fact was incapable of being deduced from facts in the public
domain which would fly completely in the face of Admission
10.

G MR. JUSTICE POOLE: If it is part of the confession as opposed
to the conversation.

H MR. CLEGG: Well.....

A MR. JUSTICE POOLE: Since we are indulging rightly - and I do
not criticise you for doing it - in textual analysis, we
have to look at the text.

B MR. CLEGG: My Lord, no. This is not, so far as the Admission
is concerned, textual analysis. This Admission has, as it
were, survived something -- four years, I think, since it
was first made.

C MR. JUSTICE POOLE: Oh, yes, precisely, but we are looking at
the text of paragraph 10 and the text of paragraph 10 and
its first sentence is this: "The facts contained in the
alleged confession to Damien Daley were either all in the
public domain or were capable of being deduced from facts in
D the public domain."

E MR. CLEGG: Yes, but, my Lord, it has never been suggested by
the Crown, nor have they ever sought to suggest that that
admission made, as I say, four years ago, was ever intended
to, as it were, tiptoe through the conversation delineating
self-serving facts from confession. It is a shorthand. It
has always been understood by everybody that the words
F "alleged confession" refers to the conversation.

G MR. JUSTICE POOLE: Well, then I do not understand, because it
has been Mr. Sweeney's submission at this trial that the
jury should sharply distinguish the question of what the
defendant is alleged to have said about the identification
parade from the confession. That is his stance at this
H trial and now you are telling me it has never been

A maintained by the prosecution that there is a distinction.

MR. CLEGG: No, my Lord, I did not make myself clear. Mr. Sweeney has suggested - and he is entitled to suggest - that the deduction cannot be made from the Mirror. He is not saying that the deduction cannot be made from facts within the public domain. He has said that the deduction cannot be made from the paper that was found in Daley's cell and that is the crucial distinction. He cannot submit the deduction cannot be made from the other material in the public domain without going against Admission 10 and, indeed, were he to so suggest, then obviously the jury would have to examine the material because no-one has seen it. It has not been necessary for anyone to see it because of Admission 10. So with that caveat - and it is a very important caveat - I agree with what my Lord proposed to say. I agree with Mr. Sweeney's summary of the evidence. I do not think I can assist my Lord any further.

MR. JUSTICE POOLE: You made reference to the possibility that the jury should consider of Daley having access to material other than the Mirror that was in the public domain.

MR. CLEGG: Yes.

MR. JUSTICE POOLE: You mentioned as a possibility that other newspapers could have been handed down to him.

MR. CLEGG: Yes.

MR. JUSTICE POOLE: What was the evidence as to that? His evidence was - and it is a matter for the jury to reject it

A or accept it as they see fit - his evidence was, as I
recollect, that the Mirror was the only paper that he had
access to that day.

MR. CLEGG: Yes.

B MR. JUSTICE POOLE: But it is for them, of course, to evaluate
his evidence.

C MR. CLEGG: That is right. That is his evidence and there is
the Admission in relation to newspapers and their
availability in the block. That was one of the last
Admissions made, in part to cover this very point.

MR. JUSTICE POOLE: Thank you.

D MR. SWEENEY: It may be that we are actually saying the same
thing in a slightly different way. Admission 10, save
insofar as the qualification in its second sentence is
concerned, does not, in its terms, differentiate between
E which parts of the alleged confession were facts in the
public domain and which parts of the alleged confession
could be deduced from facts in the public domain. Insofar
as Mr. Stevens' evidence is concerned, putting aside the
F logical step that talk about she had picked him out being
not strictly part of the confession but part of the
conversation, but putting that to one side, the purpose of
the Crown calling Mr. Stevens and presenting our case in the
G way that we have is to prove by evidence that that was not a
fact which was in the public domain. Therefore, the issue
in relation to that fact, which is the one fact that is in

A evidence was not in the public domain, is the realism of the
B capability of deduction and that is where the parties have
C differed in their speeches based on precisely the same
D evidence. Therefore, the answer surely to the jury's
E question must address the fact that the admission does not
F seek to differentiate between what were facts in the public
G domain and what was capable of deduction from facts that
H were in the public domain save insofar as it illustrates the
position insofar as the swimming gala and the strips of
towel were concerned, but that in relation to the
identification parade, there is clear evidence that the fact
was not in the public domain and the issue between the
parties has been the realism of deduction of that fact or
not, it being, as I pointed out to the jury, a fifty-fifty
chance as to whether you get it right or wrong. Equally,
the evidence is absolutely clear that the defendant was told
that Nichola Burchell had picked him out and was told the
terms in which she had done it.

MR. JUSTICE POOLE: Thank you.

MR. CLEGG: It is a very minor point. I do not think he was
actually told the name of Nichola Burchell.

MR. JUSTICE POOLE: I think that is wrong.

MR. CLEGG: Maybe I am wrong. I heard a correction. It is page
30. In fact, I am wrong. It is page 30, letter G. I was
going from memory. There is not, in fact, much between Mr.
Sweeney and myself. I agree that there is evidence that the

A result of the identification parade was not in the public
domain. I agree that either the realism of deduction, as
B Mr. Sweeney so describes it, or the ability of Daley to
deduct is a matter for the jury. The only difference
C between us, if there be one at all, is that the Admission
makes it clear that the result of the parade was capable of
being deduced from the media. I am just putting it in
D shorthand. I do not think Mr. Sweeney is seeking to go
behind that. Whether, in fact, Daley himself could deduce
it, of course, is for the jury, but that it was capable of
being deduced is admitted. He rightly has reminded my Lord
that he says that the jury should accept Daley's evidence
that he did not so deduce it and we have suggested that he
did and could. Unless I can assist my Lord further?

MR. JUSTICE POOLE: No, thank you very much. I am going to rise
and consider this.

(Short adjournment)

MR. JUSTICE POOLE: The jury can come in.

(The jury returned at 1.05 p.m.)

F MR. JUSTICE POOLE: Thank you, members of the jury, and thank
you for your question. May I assure you that whereas, from
time to time, a delay may ensue the sending of a question
before you get it answered by me, it is not because it is
G being neglected or ignored at all. It takes time, as you
will appreciate, to examine these things. So whenever and
if ever you send a question, it will be promptly considered

A and then when you have sent such a question, of course, you
can continue with your deliberations.

B Your question was in these terms: "We require clarification
on paragraph 10 in the Admitted Facts. The statement
C implies that all parts of the alleged confession were in the
public domain or could be deduced from items in the public
domain, but the prosecution asserts that only the defendant
knew that he had been picked on the ID Parade which
contradicts the Admitted Fact. So how much of the alleged
confession is agreed to be in the public domain or deducible
therefrom? Tried to run away, dog present, etc." Following
D on: "Was it made clear to Stone that a female, i.e. Nichola
Burchell, identified him in the identity parade or just a
witness?" The position is, members of the jury, that the
statement in paragraph 10 states that, indeed, all parts of
E the alleged confession, that is to say conversation, were in
the public domain or could be deduced from items in the
public domain. I will read again to you, members of the
F jury, what paragraph 10 of the Admitted Facts says. "The
facts contained in the alleged confession to Damien Daley
were either all in the public domain or were capable of
being deduced from facts in the public domain." There are
G no exceptions there, members of the jury. It means what it
says, "all the facts." "This admission is made in the
context of there having been, prior to 23rd September 1997,

A publication of the Russell girls having attended a swimming
gala on the day of the attack and that the defendant had
tied the victims with strips of towel and it not having been
possible to identify all media coverage of the case prior to
B 23rd September 1997."

C Members of the jury, further to that, I remind you of the
evidence that was given by Superintendant Stevens and by
Inspector Neilson that bears upon your questions.

D Superintendant Stevens said that there was a deliberate
decision to hold back the result of the identity parade from
the media and that having looked at the newspapers published
between the parade and the alleged confession, he had
established that there was no reporting of the result of the
parade. Inspector Neilson's evidence was that the
E defendant, after the parade, was told that Josie had not
identified anybody but that Nichola Burchell had picked him
out from the group and his evidence, too, was that the
officer had then quoted to the defendant the words that she,
F Nichola Burchell, had used. Mr. Clegg submitted to you, in
his final argument, that it was possible or likely that the
defendant had deduced from the Mirror article that Josie had
picked him out.

G MR. CLEGG: I think my Lord means Daley.

MR. JUSTICE POOLE: Forgive me, forgive me. I do mean Daley. I
am misled by my "D", members of the jury. I am grateful to

A you, Mr. Clegg. That Daley had deduced from the Mirror
article that Josie had picked the defendant out, it being
common ground between the parties that all the facts were
B either in the public domain or being capable of being
deduced from facts in the public domain. The prosecution
say that the fact itself was not in the public domain and
that Superintendant Stevens' evidence establishes that, but
C that the ease with which it could be deduced from material
in the public domain, for example from the Mirror article,
is a matter for comment between the parties and, therefore,
a matter for you to consider. Mr. Clegg submits that it
D could be readily deduced from facts in the public domain,
for example the Mirror article or perhaps some other article
to which Daley may have had access, although his evidence
was that he only had access to the Mirror at that time. Mr.
E Sweeney's submission to you is that it could not be readily
deduced from the material of which you have been made
aware. That is where the position lies as between the
parties and it is for you to consider, members of the jury.
F Thank you very much. Would you please retire and continue
your deliberations?

(The jury retired at 1.12 p.m.)

(Later - in the absence of the jury)

G MR. JUSTICE POOLE: Mr. Sweeney and Mr. Clegg, I have had a note
from the jury asking whether they would be permitted to
adjourn for the rest of the day and to come back tomorrow.

A Obviously I will accede to that request. They have also asked to have Damien Daley's evidence reread and subject to anything that either of you may say, I shall comply with that request, too, tomorrow morning at 10 o'clock.

B MR. CLEGG: Certainly, my Lord.

MR. JUSTICE POOLE: Yes, let the jury come back.

(The jury returned at 4.11 p.m.)

C MR. JUSTICE POOLE: Members of the jury, thank you for your note. You ask me two questions. First, "Can we adjourn at 4 o'clock and come back tomorrow?" Certainly you can. I accede to that request and in a moment I shall be permitting you to separate for the day.

D You then ask whether you can have Daley's evidence reread, my note of it. The answer is again "Yes" and I will reread to you my note of Damien Daley's evidence, therefore, tomorrow morning at 10 o'clock if that is convenient.

E Meanwhile, members of the jury, I can tell you this, that you will not be required to deliberate further today and I am now going to allow you to go home and to continue your deliberations tomorrow. It is most important that after you have left the court, you should not discuss the case with anybody else or allow anybody else to speak to you about it. It is the essence of the jury system that you should reach your verdicts when you are together in your jury room and that your verdicts should be based only on the evidence

A and arguments which you have heard in court. Therefore,
once you have left court, you should not seek any further
evidence or information about the case. You should not
discuss the case amongst yourselves or attempt to contact
B one another to discuss the case. When you return tomorrow
morning, you should please go straight to your jury room,
but do not discuss the case there or anywhere else until I
have had you back in court and sworn in the jury bailiffs in
C your presence and have asked you to retire to your room once
more to consider your verdicts together. Thank you all and
you are now free to leave.

(Adjourned until 10 a.m. on 4th October 2001)

D 4th October 2001

(In the absence of the jury)

MR. JUSTICE POOLE: Mr. Ellison and Mr. Clegg, just for the
avoidance of doubt, I wanted to be clear about one thing.
E There is nothing, as I understand it, in the public domain
about the killer being aroused by the swimming costume.
What the defence say is that Daley has deduced or invented
that allegation from what was in the public domain. Is that
F the position?

MR. CLEGG: My Lord, I do not think there is any evidence one
way or the other.

G MR. JUSTICE POOLE: No, but the position must be clear.

MR. CLEGG: The way it was suggested on behalf of the defendant
was that that was something that.... I am just pausing. I

A want to be quite certain that I accurately repeat what I
said about it. I would just like to check my note to make
quite certain exactly what I said.

MR. JUSTICE POOLE: Of course.

B MR. CLEGG: My Lord, I am reading from in the notes that I wrote
for my speech and I think I followed them. I said this:
"Much of what Daley said may be wrong, but no-one knows,
for example, the orgasm." So that was the way that I put it
C in my final speech.

MR. JUSTICE POOLE: But looking at it realistically, Mr. Clegg,
how could it conceivably be in the public domain that the
killer had sniffed the swimming costume in order to gain
D arousal? Your case surely is that that is an invention of
Daley's based upon his knowledge that the girls had been
swimming that afternoon, a fact that was in the public
domain?

E MR. CLEGG: Yes. I did not directly address the swimming
costume.

MR. JUSTICE POOLE: No, I know you did not, but I am seeking
F here to deal with the problematical drafting of Admission 10
which deals in one sentence with "facts in the public domain
or being capable of being deduced from facts in the public
domain." Now it is clear beyond a peradventure, is it not,
G that this allegation of sniffing and arousal is in the
latter of those two categories and not the first, i.e. it is
capable of being deducted, but not actually a fact that was

A

proclaimed in the public domain. I cannot see logically how it can be otherwise.

MR. CLEGG: My Lord, it certainly cannot be a fact logically in the public domain.

B

MR. JUSTICE POOLE: But certainly capable of being deduced from the facts in the public domain, like knowledge, for example, that the girls had been swimming.

C

MR. CLEGG: Yes, but the only hesitation I have in agreeing completely with my Lord is that that falls into a category, like the orgasm, where there is, in fact, no evidence either way as to whether it occurred. So it is not a fact that we concede existed.

D

MR. JUSTICE POOLE: Well, of course not.

MR. CLEGG: But subject to that caveat, I agree entirely with my Lord.

E

MR. JUSTICE POOLE: I fully recognise that. Your case is - and you have made it very clear and properly so - is that this is pure invention.

MR. CLEGG: Yes.

F

MR. JUSTICE POOLE: But clearly the allegation that there was a sniffing of a costume resulting in such arousal was not itself, as a discreet fact, in the public domain.

MR. CLEGG: No.

G

MR. JUSTICE POOLE: But your case clearly is that it has been deduced/invented by the allegor, namely Daley.

MR. CLEGG: Yes. The existence of the swimming costume almost

H

A certainly is in the public domain.

MR. JUSTICE POOLE: Of course, certainly.

MR. CLEGG: But what happened to it, we say it is an invention
or deduction.

B MR. JUSTICE POOLE: That is clear. Thank you very much indeed.
I am grateful to you. Do you want to add anything to that,
Mr. Ellison?

MR. ELLISON: No, thank you.

C MR. JUSTICE POOLE: Let the jury come in.

(In the presence of the jury)

D MR. JUSTICE POOLE: Thank you, members of the jury. Then in
accordance with your request of yesterday, I am going to
remind you in full of the evidence of Damien Daley. All
right?

E He said that he had been born in May of 1975, so was 22 in
September of '97. He was remanded to Canterbury Prison
about July of '97 and was later moved to the Segregation
Unit and had been there about three weeks before the
material time, all of the time in one cell. "The cells
F above were for nonces," i.e. prisoners at risk in prison.
"There was wire meshing over the windows." He was in Cell
3. "The windows were mainly left open. The pipe would be
G hot or warm, building up, depending. At 8 o'clock, it would
probably be hot."

A "You're not allowed privileges in there, but you can get newspapers. Either the people upstairs dropped them down on a line and you pulled them through the wire or the screws pushed them under the door when they're knocking off.

B There's no TV. Night shifts starts about 7 o'clock and the day officers go off." He doesn't know what that means in terms of numbers.

C So far as offenders against women and children are concerned, he did not think that they should be allowed to communicate, they were "scum bags." He could not speak for other people's opinions, but he thinks that his are
D typical. "You only know the names on the doors to your right which is the direction of the dinner and showers," in other words, you go past those doors on the way to, for
E example, your shower, so you will see those names but do not see the names in the opposite direction. "I was able to communicate with other prisoners on the wing. You can
F either communicate along the pipe, right and left, or send papers through the window on a line or else talk through the windows."

G He was asked about the pipe. He said, "You can talk into the corner where the pipe is and so communicate through into the next cell. In Cell 3, if I wanted to talk with the man in Cell 2, I would go to the bed, lean as close to the pipe

A as possible and talk through it. You can hear just as easily by turning your head and putting your head to the wall, not on the pipe itself because it's hot and not on the wall itself, but close."

B "I knew very little about the murders in Chillenden. I'd heard something on the news and I did hear that a woman and a child had been killed, but I knew very little and I
C couldn't tell you of the detail."

D He was then asked about Tuesday, 23rd September. He said he did not know the name of the man in Cell 2 before these events. "A few of the lads were shouting and screaming at someone, saying, 'Come to the window. What are you in for?'
E A jail interrogation. This was about 8 to 8.30 in the evening. He said he was in for robbery and intimidating witnesses and another charge I didn't catch. They shouted, 'What else are you in for? Don't lie!' He went quiet.
F They shouted at him to come to the window and defend himself. They knew in their own minds what he was in for. He said, 'You know what else.' They said, 'Come to the window and defend yourself if you're innocent, we'll talk about it' sort of thing. That went on for five or ten
G minutes. I hadn't said anything up to now. I went to my table and started reading the paper and then I cottoned on to what was going on. I thought I'd talk to him in the

morning. I thought if the screws heard what was going on, either I'd get moved or he would. If the officers think someone's getting it from inmates, they'll move him or move the people shouting and screaming. I think the paper was the Mirror. I'd got it through a line, i.e. passed from upstairs. I told the others to leave him alone because he was innocent and only in for robbery and to be quiet basically and they went quiet. I got down from the window. There was a short pause and then I could hear someone talking to me through the wall from no. 2. When I first heard the talking, I was sat at the table under my window. I realised where the sound was coming from and went and lay on the bed towards the pipe with my head through the bars on the bunk. The person told me I was his mate and 'thanks for doing that.' I told him to shut up, but carried on listening. A bit of a conversation went on and he began to tell me certain things. He started talking about 'smashing heads, breaking eggs' he said. I was confused. One minute it was, 'You're my mate,' next it was a different conversation. He said, 'I'd have been okay if that slag hadn't picked me out' or something. 'I'd be all right if that slag hadn't picked me out.' He said something about 'breaking eggs and inside it would be mush' or something. I told him to be quiet. I didn't really know what he was talking about. I went back to my table and started reading the paper. I began to read the paper and got to an article

A about a girl having a bravery award or something. It
mentioned the Chillenden murders. I didn't realise there
was a survivor and I didn't realise his name was Stone. I
thought it was Stow. Then I realised he was still talking
B to me and I went back to the pipe. I'd read every article
up to the Josie article on page 11. You tend to read
everything and I'd reached this article. The article didn't
refer to him by name. But when he said 'that person had
C picked me,' I realised he was talking about this situation,
so I went back to the pipe to listen. While I was reading
the paper, he was still talking. I couldn't make out what
he was saying then because I was away from the pipe. You've
D got to be some distance into the pipe to get the sound of it
properly. So I lay on the bed with my head through the bar
with my head as close to the pipe as possible. I told him
to shut up and be quiet or I'd tell the screws. He said,
E 'They won't believe you and even if they do, I'll be nudded
off,' that is he'd plead insanity I understood and he said,
'I'll be out and it'll be your kids.' He talked about
F tying people with towels and something I couldn't make out.
I lay on the bed and listened. He talked about wet towels
and someone being 'disobedient' and 'they tried to get away
but didn't get far.' He said they didn't have what he
G wanted. He referred to them as 'paupers.' He said, 'The
dog made more noise than they did.' It was confusing. I
thought he was referring to a female. I now later know that

A there was a dog involved. He talked about making someone
watch or something like that, but they closed their eyes and
he hit them. He talked about the swimming costume and that
he became aroused by it. He said it had given him an orgasm
B or he had nearly had an orgasm or along those words and one
of the girls was disobedient but she didn't get far. He
said it was a swimming costume that had aroused him. He
said he had sniffed it, the smell of it. He said
C 'costume.' He didn't say 'swimming.' I don't remember
anything else. My mind has gone blank, sorry." Members of
the jury, on that matter, there was nothing in the public
domain about the killer being aroused by the swimming
D costume, but the defence submit that Damien Daley has
deduced or invented that allegation from what was in the
public domain, namely that the girls had been swimming that
afternoon and would have costumes. The prosecution say that
E that is not an invention but what he had heard from the
defendant along the pipe. Clearly, it is an important
question and it is one for you to decide. "I had the hump,"
F he continued. "I wasn't happy at all. I was shouting and
swearing at him and every now and then I'd pace around the
cell. Then I'd go back and listen. He was very matter of
fact. He knew what my reaction was from the other side of
G the wall. This seemed to go on forever, but it must have
been only 10 to 15 minutes, not a conversation but a one-way
situation sort of thing. The last thing he said was they

A didn't have what he wanted. I've been trying to put it out
of my head, to the back of my head and now you're asking
questions about it. I started shouting and screaming or
threatening him and that was it. I can't recall what
B brought it to an end. I sat on the bed, rocking to and
fro. The night seemed to go on forever, an eternity. All I
had was my ears. I didn't actually see anybody. It was
like being told a horror story, but more twisted when you
C realised it was real."

"In the morning, the screws came round. I told them to be
quiet and I shouted 'Stow, Stow.' The officers pulled me
D from the wall. They could have heard it instead of me and
I'd have been out of it, but they didn't want to know. I
just sat there and the screws came in and moved me. I made
my statement to the police on 26th September."

"The criminal code is that you don't hurt women and
children and old folk or tell the police anything, but my
F uncle, on a visit, told me that if I told the police, I
wouldn't be a grass, so that led to my statement."

He was cross-examined, members of the jury. He said, "I
G know what's meant by 'fitting up.' It's when you help the
police in doing things that aren't true, for example,
putting a firearm that wasn't meant to be there." He agreed

A it would include making up admissions that had not been made. He said to that, "I didn't even want to be involved in this case. To say I went out of my way to fit him up is complete bollocks."

B He said, "I don't know Stone by name or personally and I knew virtually nothing about the Chillenden murders. I thought one woman and a child had been killed. I knew nothing else. When I read the Mirror, it's not that it fell into place, it didn't mention a dog or a lace."

C He agreed that there was no mention of a bravery award in the Mirror article. "It mentions her being brave."

D He denied that he was well prepared for the job of framing of the defendant. "If I had been," he said, "I would have remembered things well."

E He was asked if he had read any other papers that day. He said "No, I didn't. It takes a long time to pass papers through the chicken wire."

F "I remember him saying it gave him an orgasm or it nearly did. When I said that, I was trying to be polite, giving evidence here, instead of saying that he said, 'I had the greatest orgasm of my life' which is what he actually said

A and that's what I said to the police. When I said 'nearly,'
I was trying to put it in a polite form. I'm sorry if my
ifs and buts were misguided. I didn't want to upset the
B court, but I wasn't trying to mislead. I'm sorry if I seem
to be getting the hump. I didn't know the name of the man
in the cell, only from what people were calling him. They
were calling 'Stow' or 'Stone.' I don't know when I found
out that his name was 'Stone.' There was no mention of it
C in the Mirror."

It was put to him that when he went to the wall, when the
officers were there the following morning, he called out
D "Michael, Michael." He said "No, that's a mistake. I must
have said 'Stow' or 'Stone.' I knew that name from people
shouting it from above." He said the man nextdoor did use
the word "paupers."

E He said that he had read the paper as well as he could
although he is dyslexic. It was put to him and he was
reminded that the word "pauper" appears in the paper on page
F 6. He said, "There are some things that I wouldn't bother
reading in the paper, for example about Edwina Curry. I'd
read about Arsenal and Ian Wright, but I wouldn't be
G interested in Bill Gates and money." His attention was
drawn to another article on page 10 about a man refusing to
bury his wife. He said, "I more than likely read that,

A including the expression, 'pauper's grave.' My statement says 'something like pauper.' That's a word that I remember from my childhood."

B He agreed that Stone was a man who would not be safe in prison, accused as he was of the murder of a mother and a child. "The code is that you don't hurt women or children." He agreed, therefore, that there was every reason for him to watch his back in prison because he has allegedly murdered a woman and a child.

C
D He denied that he had a reputation as the hardest man in the prison. He agreed that on a previous occasion he had said he had a reputation as the hardest man in the prison because he was categorised as being a "tough guy" in prison, but he said, "I don't consider myself a tough guy. If others say so, all right." He explained that he had a reputation of being the hardest man in the eyes of other people, but that he did not consider himself that.

E
F He was then asked questions, members of the jury, about heroin in prison. He said, "I didn't deal in heroin at prison. I was caught trying it and I got into trouble. I pleaded 'Not guilty.' I was, in fact, guilty. I was piss-tested twice. On one occasion I hadn't taken heroin I pleaded "Not guilty" and on one occasion I had taken

A heroin. On another I hadn't." He agreed that he had tried
every drug. He was then cross-examined, members of the
B jury, and he said that he had tried -- he was cross-examined
further on the matter. He said that he had tried heroin in
C prison and had got into trouble. It was put to him that on
an earlier occasion when giving evidence on oath about these
charges, he had denied taking heroin in prison. He admitted
that and said that that was because he could not see what
D relevance the question had to the evidence he was giving.
He then further explained that what he calls 'heroin' is the
powder form and that what he had been urine tested positive
for were opiates taken in tablet form which give the same
E positive test as heroin and that if he had taken heroin, by
which he meant powder, he would have said so. He said that
he had admitted taking heroin on one occasion when he had
been positive tested in this way, that is to say after
F taking opiate medicine and, therefore, denied that he had
really lied on oath about his drug taking. On one occasion,
he said, he had changed his plea from "Not guilty" to
"Guilty" in a prison adjudication for taking heroin
G "because such adjudications always ended in a guilty
verdict anyway." He reiterated that the tablets contained
opiates and that he had not lied to a jury to cover up his
drug taking. Indeed, he readily admitted that he had taken
every kind of drug.

A He agreed that he was a crook and that he lies to get by in
life and that crooks "beg, borrow, steal and lie to get
through life." He said, "I am a criminal and I do lie when
B it suits me and I have committed violence, robberies, thefts
and burglaries." He agreed that a lot of attention had been
focused on him by others in the Segregation Unit, that is to
say had been focused on the defendant by others in the
C Segregation Unit. They were asking for him to defend
himself. "Certain inmates," he said, "do consider
themselves judge, jury and executioner. I thought that if
the screws came past and put us in different cells, I
D wouldn't be able to do my own investigation in the exercise
yard. I don't know what I had in mind. I don't know if I
was going to smack him in the head or what. I was going to
attack him next day unless he could convince me or
E something, but I wouldn't have been too bothered if I'd been
moved. I had him on one side and someone trying to nut
himself on the other. For all I knew," he agreed, "there
were officers standing outside" and he agreed that if
F someone is talking through the pipe, someone could hear
outside the door. He was at a desk, he said, that is made
of cardboard when he first heard something being said from
G nextdoor. "I heard my surname being called, 'Daley,' and I
went to the bed. You lean over and put your ear as close to
the wall and pipe as possible, not actually touching the
H wall or the pipe" and then he demonstrated a distance of two

or three inches, members of the jury. "He spoke and I listened for a bit. After a while, I moved away and sat at the desk. There I could hear his voice, but it's hard to hear what he is saying. It would be broken up. At the desk, I would miss words, but I'd make out part. I read the paper there. I then went back to the bed at the position I had before. I spoke, too, and interrupted more than once. You turn your head to put your mouth close to the pipe, like talking into and listening from a tin can. There was a time when I was pacing up and down the cell because what he was saying was upsetting me. I couldn't hear what he was saying then. I'd heard what he had said and so I started pacing up and down, but I didn't hear why I was pacing up and down. You couldn't possibly have heard him then. If he'd had been whispering on the other side of the pipe I wouldn't have heard anything and I haven't told anybody that he was whispering. If you were pacing up and down, you'd hear parts. It's a tiny room. It's hard to explain. I don't remember if he was talking while I was pacing up and down. I'm not 100% sure of that. I think there was some talking while I was pacing, so I went back to the pipe. I had to go back to the pipe to hear. I would have heard only parts of broken conversation as I walked towards the pipe." I said, 'Shut your mouth. You're a sick twat.' I don't recall if I was walking up and down when he mentioned 'shoelace' or 'short lace.'" He agreed that rumours can travel very fast

A in prisons. He said that he did not know it was the
defendant in that cell, all he heard was a voice.

B "Normally," he said, "I would be in a different wing from
him. I didn't ask to be segregated or for him to be in the
nextdoor cell to me" and he denied that he had framed the
defendant.

C He was re-examined by Mr. Sweeney, members of the jury. He
said that he had had prison sentences in the past of 18
months and 22 months, i.e. relatively short ones and not
long ones. "I don't remember whether I was pacing or by the
D pipe when I heard the expression 'short lace' or
'shoelace.' I did decide at one point to have words with
the man in the yard. That was when all the boys were
screaming at him. It's not true that not a single word
passed between us. I'm giving evidence because I feel
E guilty towards the little girl. I was told my evidence
would have no weight. I told them what I heard and that is
the truth. When I was taking heroin, it was in Elmley
F Prison, in tablet form. It's a painkiller. That happened
on two nights. You don't use cocaine and amphetamine in
jail. Who wants to be awake all night?" That completes his
evidence, members of the jury.

G MR. CLEGG: My Lord, there is one very minor error I think in my
Lord's note. I think you said to the jury that it was
suggested to Daley by me that he used the words "Michael,

A Michael" the next morning to the prison officers. In fact -
and I am looking at page 35 of the transcript - the question
was, "(Q.) Let me remind you. They came into your cell and
you went to the wall and you called out?" and then the
B answer from Daley was, "(A.) 'Michael, Michael,' yeah." He
went on to say, "No, I said to the jury I went to the wall
and went 'Michael, Michael' and banged on the wall which was
obviously untrue" and went on to say he said "Stow" or
C "Stone."

MR. JUSTICE POOLE: Thank you very much, Mr. Clegg. Thank you.
I am grateful for that. Well, I accept that correction,
D members of the jury, and bear that well in mind.

When the jury bailiffs have been sworn, would you please
retire again and continue your deliberations?

(The jury retired at 10.32 a.m.)

E MR. CLEGG: My Lord, I have been asked by some of the press to
raise one matter with the court. A number of them would
like to know whether the Contempt Orders cease immediately
F on the return of the jury's verdict; in other words, can
they go out live from that moment?

MR. JUSTICE POOLE: What do you say about that?

MR. CLEGG: My Lord, I would have thought after verdicts have
G been returned, they could.

MR. ELLISON: I can think of no reason for it not to.

MR. JUSTICE POOLE: I agree. So the answer is that the Contempt

A Orders will be lifted from that moment. Thank you. I will rise.

(Later - in the absence of the jury)

B MR. JUSTICE POOLE: Mr. Clegg and Mr. Ellison, I have had a note from the jury, the contents of which I am not at liberty to disclose. I am going to ask the jury to come back and I am going to give them a majority direction.

(The jury returned at 2.44 p.m.)

C THE CLERK OF THE COURT: Would the defendant please stand? Will the Foreman please stand?

D Mr. Foreman, will you please confine yourself to answering my first question "Yes" or "No." Has the jury reached verdicts upon which you are all agreed?

THE FOREMAN: No.

THE CLERK OF THE COURT: Thank you. Please sit down.

E MR. JUSTICE POOLE: Thank you very much, Mr. Foreman. Members of the jury, I ask you once more to retire and to continue to try to reach unanimous verdicts, but if having done that, you cannot, I will accept majority verdicts, that is to say verdicts with which at least ten of you agree. Please retire again.

(The jury retired at 2.45 p.m. and returned at 3.24 p.m.)

G THE CLERK OF THE COURT: My Lord, 10 hours, 47 minutes have elapsed since the jury first retired to consider their verdicts.

Will the Foreman please stand? Will the defendant

A

please stand? Mr. Foreman, will you please answer my first question "Yes" or "No." Have at least ten of you agreed upon your verdict?

THE FOREMAN: Yes.

B

THE CLERK OF THE COURT: On Count 1, do you find the defendant, Michael Stone, guilty or not guilty of murder?

THE FOREMAN: Guilty.

C

THE CLERK OF THE COURT: Is that the verdict of you all or by a majority?

THE FOREMAN: By a majority.

D

THE CLERK OF THE COURT: How many of you agreed upon the verdict and how many dissented?

THE FOREMAN: Ten and two.

E

THE CLERK OF THE COURT: On Count 1, you find the defendant, Michael Stone, guilty of murder and that is the verdict of of a majority of ten of you to two of you?

THE FOREMAN: Yes.

THE CLERK OF THE COURT: On Count 2, do you find the defendant, Michael Stone, guilty or not guilty of murder?

F

THE FOREMAN: Guilty.

THE CLERK OF THE COURT: Is that the verdict of you all or by a majority?

THE FOREMAN: By a majority.

G

THE CLERK OF THE COURT: How many of you agreed upon the verdict and how many dissented?

THE FOREMAN: Ten to two.

H