APPROVED **NO REDACTION NEEDED**

THE COURT OF APPEAL

Court of Appeal Record No. [145/2015]

Edwards J

McCarthy J

Kennedy J

BETWEEN/

THE PEOPLE (AT THE SUIT OF

THE DIRECTOR OF PUBLIC PROSECUTIONS)

RESPONDENT

AND

KEITH O'NEILL

APPELLANT

JUDGMENT of the Court delivered by Mr Justice McCarthy on the 27th day of July 2022

1. This is an appeal by Keith O'Neill, the appellant herein, against his conviction for murder at the Central Criminal Court. The case against the appellant was circumstantial in nature. In the circumstances there were a number of separate pieces of evidence which the Prosecution argued combined to form an overwhelming case against the appellant. We shall therefore refer to the facts in a degree of detail as these separate pieces of evidence, threaded together, grounded the conviction.

2. The victim was one John Wilson who was murdered on the 28th of September 2012 at his home at 131 Cloverhill, Ballyfermot, Co. Dublin. Mr Wilson was shot in the back. Six rounds were discharged but only two of them entered the deceased, one to a fatal effect. Six cartridges were later retrieved at the scene by Gardaí. Mr Wilson died almost instantaneously

in the front hallway of his home. There were a number witnesses to the matter, including the victim's seven-year old daughter and her evidence was read out at trial pursuant to section 21 of the Criminal Justice Act 1984; the murderer was observed jumping into the back of a vehicle which had pulled up outside the house and in which he also left the scene. However, none of the witnesses could clearly identify the assailant as he was hooded with his face further covered with a scarf or some other material. The deceased's daughter had said "*I don't know who the bold boy was that did that [the shooting] to my Dad but he was a little bit fat*" [*sic*]; the jury were invited by defence counsel to contrast the "*lean appearance*" of the appellant with what she had said.

3. Gardaí were notified at about 2.55pm of the shooting. Within minutes of the event, a vehicle similar to that described as being that used to leave the scene was found to have been set alight at Cherry Orchard Crescent in the same area. This vehicle was found to have been set alight with petrol or some other accelerant. On technical examination the vehicle's registration number was identifiable, and it was found that the vehicle had been stolen from a house in Kildare several days before the crime. A number of items were retrieved from the burnt-out car and these included two scarves and gloves. Barcodes retrieved from these items of clothing made it possible to link them with purchases made the preceding day in Dunnes Stores where there was also CCTV footage of the appellant. A gun was also found in the car and it may safely be concluded that it was used in the currency of the crime.

4. During the course of the investigation, on the same day, Gardaí had placed the appellant under surveillance, during which time he was observed placing two bags, each branded "*JD*" (that being the brand of a sports-fashion retailer), in a skip close to his place of residence at or about 8.20pm – the skip contained builders rubble or the equivalent; he was arrested. The bags were seized by a Garda Doolan, who wore gloves for the purpose, and he placed them in the

footwell of his patrol car; he was an officer authorised to carry firearms and the patrol car in use was one in which gardai with such authorisation routinely travelled.

5. One of these bags contained two T-shirts, a pair of jeans, a receipt for purchase, socks and runners. There was evidence that a number of these items bore a similarity to clothing worn by the assailant during the shooting. This clothing had been purchased earlier. The appellant had changed into new clothing having gone again to purchase clothing after the murder in Liffey Valley Shopping Centre. This was evidenced by further CCTV footage obtained by Gardaí and an admission was made at trial that he had visited the shopping centre that evening.

6. The second bag contained what was described as household rubbish and was of no further relevance. The bag containing clothing was given to Sergeant Paul Curtis on the 28 of September 2012 in the Detective Unit Office at Ballyfermot Garda Station. Its contents were emptied out onto a table. Officers attached to the Unit using that office carry firearms from time to time. Counsel canvassed with the witness, accordingly, issues relating to contamination of those items by firearms residue. Sergeant Curtis said that firearms would not be placed upon the table. The items were placed in bags thereafter.

7. One Glen Reilly gave evidence that he gave a lift to the appellant from Croftwood Grove, which is a few minutes away from the scene of the shooting, around 1.30pm on the day of the shooting and drove him to a local chip shop at his request. Around that time, Mr Reilly learned of the shooting from another person; within minutes, he drove back towards the scene of it, but the area was inaccessible due to a crowd and a Garda presence. During his interaction with the appellant, the appellant requested the use of Mr Reilly's mobile phone to ring his girlfriend. It was however shown upon investigation of call records that the appellant was in fact phoning his own mobile phone during this period. There was also CCTV footage in which a person could be seen at a distance jogging from the area where the vehicle was burnt out in the direction of Croftwood Avenue, immediately near Croftwood Grove. The person was not

identifiable but appeared to be wearing a jacket or "*zippie*". A person contended to be the appellant was observed on CCTV footage prior to the shooting wearing a grey jacket or zippie of a similar nature and there was later CCTV footage of the appellant but without such an item.

8. The latter vehicle was later searched as part of the Garda investigation. It contained a Maglite Torch which ultimately became significant as the owner of the burnt out car, a Mr William McCormack, claimed ownership of the distinctive torch and gave evidence that he recognised his name and telephone number which he had scratched onto the torch (despite an effort having been made to obliterate his engravings).

9. A Dr Thomas Hannigan of Forensic Service Ireland had conducted forensic analysis of the clothes so recovered from the skip and he found 18 particles characteristic of, or consistent with, firearm residue in or on the clothing, three of which were characteristic of firearm residue and the rest consistent with firearm residue. By consistent Dr Hannigan explained that this meant "*consistent with firearm residue but could also arise from other sources*". Specifically, 13 particles were found on the jeans, including the three described as characteristic; five particles were found on the T-shirt, all of them being described consistent. There was no residue found on the inside of the bag itself upon examination.

10. The chances of a combination of particles occurring by chance on someone's clothing is extremely low but Dr Hannigan agreed that nail guns using gunpowder or brake pads, or batteries can also produce particles, and, indeed, a tiny portion on a detonation causing inflation of an airbag. He was not originally aware that the bag was placed in the footwell of the Garda car. To put the matter shortly, he considered that best practice will involve bagging anything found at the scene to minimise the risk of contamination and this had not been done. The fact that the two bags were kept in the footwell was a significant piece of information for him, but he said that for contamination to occur there would have had to have been what he described as a significant amount of residue in the footwell and that it would to transfer from there into

the bag containing the clothing. The witness was informed that the last time when the guard who found the bag, Detective Garda Doolan, discharged his firearm was in July 2012 approximately two months prior to the murder. He was of the view that any residue would have dissipated from his clothing by the date of the offence – he described his overall view as being 95-99% to that effect. He indicated that the largest potential source of residue to be found in, say, the footwell of a car would be if a firearm was discharged inside the car. He was of the view that since most of the residue specific to the jeans was in the area at both sides (with little on the T-shirts) and since there were no particles found on the inside of the bag, one would not expect the residue to be derived from the fact that the bag was in a skip – if from the skip, one would expect the residue to be general.

11. In the course of his evidence before the jury an exchange took place between the judge and counsel relevant to this appeal as follows: -

> "*Q. Where he was keeping in his aim or shot or whatever, a test firing or whatever, practice firing. Now on the evidence that you have given in relation to firearms residue as you call it, such firearms residue as he may have got upon his person when he did this practice session at the end of July in all likelihood would have fallen off his clothes two months later?*
>
> *A. It would be gone from the clothes he was wearing on the day, yes.*
>
> *Q. You couldn't say it would be absolutely gone, could you?*
>
> *A. 95, 99%, I would think.*
>
> *Q. Well, what about down the pocket of a trouser or something like that?*
>
> *JUDGE: Mr Sammon, sorry to interrupt. I mean, we can recall him but there was no questioning about whether he was wearing the same clothing on the day.*
>
> *MR SAMMON: Well, so what?*

JUDGE: It's not a "so what". I mean, if he was wearing something completely different, that's relevant.

MR SAMMON: ***I'm surprised, frankly, at your intervention at this stage in my cross-examination.*** *Of course, that is so, but I'm putting this forward on the basis of a possible scenario and I think I'm entitled to do that. I'm making it clear and I've taken pains in relation to this -- I've made it clear, I hope, to the jury where there is actual evidence such as the date upon which he fired his firearm and I'm making it clear where there isn't actual evidence and I'm proceeding on the basis of supposition.*

JUDGE: There is no evidence at all about his clothing but proceed anyway.

MR SAMMON: Well, I take it he wasn't naked.

JUDGE: No, but people don't have only one set of clothes, Mr Sammon.

MR SAMMON: He may have. There are people who keep one suit in operation constantly.

JUDGE: Well, yes, maybe.

MR SAMMON: I don't know about Detective Garda Doolan but if necessary --

JUDGE: That is precisely the point, isn't it? Go on.

MR SAMMON: ***Frankly, I would prefer if your lordship allowed me to do this cross-examination. It's an important --***

JUDGE: I've barely said a word. Right, go on.

MR SAMMON: Well, you've said several and perhaps it would be better if you said less, with respect, Judge.

JUDGE: Well, anyway, I'm saying what I'm saying, so move on.

Q. MR SAMMON: Yes." ***[appellant's emphasis]***

12. Objection was unsuccessfully taken by defence counsel to the receipt of his evidence. In this context, on the *voir dire*, Dr Hannigan had given evidence in many relevant respects similar to that given before the jury, which we cannot set out in *extenso*. Dr Sheila Willis, former director of Forensic Science Ireland, called as a witness by the Defence and gave evidence before the jury and on the *voir dire*. The main element of her evidence on both occasions pertained to the best practice in the collection and preservation of forensic evidence. When giving evidence before the jury she agreed with counsel *inter alia*, by reference to guidelines issued by the former Forensic Science Laboratory in 1993, that it is best practice to pack items "*to avoid losing material from their body or surface and to prevent the item picking up extraneous material*", and further that "…*items should be packed, sealed and labelled at the time and place of seizure and not transported to the garda station for packing*". On the *voir dire* (where the evidence was not, needless to say, precisely in the same terms), she referred to the fact that it may not always be possible to bag items at the point of seizure but that this was best practice. At both stages reference was made to the European Network of Forensic Science Institutes, with which she was associated. Specific reference was made in that context, on the *voir dire*, to the issue of evaluation when reporting *inter alia* on gunshot or firearm residue by reference to the background. She said that the way in which items were dealt with (for example, not bagged appropriately) goes to weight. Further elaboration as to packaging or anti-contamination precautions with respect to gunshot residue by reference to the 1993 guidelines took place before the jury and she said that the laboratory could refuse to test items where any test would be negated by the manner in which items were dealt with.

Grounds of Appeal

13. The grounds of appeal against conviction are as follows: -

i. The Judge misdirected the jury in such a manner as to render the resulting conviction unsafe, in that he engaged in excessive judicial commentary.

ii. The Trial Judge wrongly ruled that evidence, (which was more prejudicial than probative or otherwise inadmissible), was admissible, despite objection on behalf of the Appellant at trial.

14. We will deal with each ground of appeal in turn.

Ground One – *The Judge misdirected the jury in such a manner as to render the resulting conviction unsafe, in that he engaged in excessive judicial commentary.*

15. On the first ground counsel for the appellant submits that the trial judge's comments to the jury during the charge must be considered against a background in which there had already been supposedly excessive judicial intervention during the Defence's cross-examination (before the jury) of Dr Hannigan. It is the appellant's contention that during cross examination of Dr Hannigan, in the course of which the possibility that residue from the discharge of firearms other than from a discharge in the course of the murder was present on the clothing was raised, the judge intervened in a manner which is not the function of a trial judge but rather that of counsel for the prosecution, and then only on re-examination. Counsel says that cross-examination was "*undermined or disparaged*". In response, counsel for the respondent argue that this was simply a clarification by the judge during the currency of the cross examination as to what evidence was actually before the Court and nothing further.

16. In any case, the crux of the appellant's submissions on the first ground (against that background) is that the observations in the charge had the effect of creating an unbalanced view of the evidence to the jury. Firstly, it is said that the judge should not have commented on the

state of the evidence in relation to the possibility of contamination of the items on which the alleged firearms residue was found and secondly, it is said, in placing undue emphasis on the prosecution case in the charge.

17. The appellant argues that as the case was based on several strands of circumstantial evidence, of which the purchase and disposal of clothes on the day of the murder was one, the forms of words used served to suggest that the appellant was acting in a manner consistent with being involved in it; the judge's emphasis on the purchase and disposal of the clothes in such a manner removed from the jury, it is said, their role as arbiters of these facts. Following on from the appellant's submissions to the court of trial in relation to the alleged excessive judicial comment, an application for a discharge of the jury was made on behalf of the appellant, citing it but the trial judge refused it.

18. We set out the portions of the charge referred to in the appellant's submissions (with counsel's emphasis on those which they contend are most objectionable) as follows: -

> "*JUDGE: Then he was questioned about whether the gloves used by Garda Doolan might have been contaminated by coming from the pocket of a suit that had been previously worn by him on a firing range previously. Well now, members of the jury, it's a matter for yourself, Mr Sammon is entitled to raise all reasonable hypotheses which arise on the evidence to see whether they fit or not and there's no difficulty with that, but this particular question seems to me,* ***and I am saying this by way of comment, it's a matter for you, to be somewhat speculative and without any particular basis in the evidence in that I don't recall Garda Doolan being asked whether the clothes he was wearing on the night in question were those which he wore when he had last fired his gun about two months previously****. I make that as a comment. I mean it's possible that he could have been wearing the same clothes and if you think that's reasonably possible well then you can consider whether or not contamination would*

have been on the gloves in that pocket two months later. So, you can consider it of course, members of the jury. I'm simply may going (sic) [presumably "making"] a comment on this particular aspect of the potential contamination issue. If you find reasonable significance or reasonable possibilities on that point you're entirely free to act upon them." ***[appellant's emphasis]***

and the judge also said: -

"*JUDGE: He then says that they next repaired to Liffey Valley. Mr O'Neill went to JD sports. He got two JD sports bags. He buys goods into which he changes. He purchased an entire new wardrobe and, as Mr Devally put, giddy with excitement he couldn't wait to put it on, he went straight into the toilet, changed it there. Went out of the toilet with his child and spent some further time in the centre before going home. And what Mr Devally [prosecuting counsel] is saying in that respect is that of course those things are perfectly ordinary but they're not perfectly ordinary if they're in a particular context but you have to be satisfied beyond a reasonable doubt that they bear the guilty inference rather than a reasonably possible innocent view but, as I say, like anything else you obviously look at the items individually to see whether you accept them or not but you then have to look at the collective in deciding what the weight or the commences of the collective is.*

He then points out that after going home he went out for a walk with his child again carrying JD sports bags and you go back then to the city council CCTV from Benbulbin Road, the Marble Arch pub, the Luas stop which is just across the road I think from the Marble Arch pub and in this on into Connolly Avenue which is on the other side of the Luas tracks and the canal from Benbulbin Road and his home. He said of course that could be consistent with a little bit of freelance dumping and I suspect, as Mr Devally does, that that's not unusual as the song says and it wouldn't be perhaps anything in

itself but he again says that it's not anything in itself. It has to be seen in a particular light. It wasn't just about dumping household rubbish on the side. It was about dumping perfectly good and serviceable clothes which were fit for wear that morning but which have become unfit for wear, not because of a decision that new clothes were needed but because of a decision that new clothes were needed for a different purpose. That's what the prosecution say, members of the jury. It's up to you to decide whether you can run with that exclusively or whether there was at least a reasonably possible consistent view, consistent with innocence view of all of that. He says that every stitch of clothing was disposed of and it wasn't simply a matter of throwing away stuff that wasn't fit for wear any longer because new clothes had been got. He says the jeans were in the JD sports bag and there was no jacket in that bag. He said that the man who fired a weapon or the man who was seen on the street was hooded and he said it's terrible ill luck if what happened here is that the gunshot residue migrated to a specific part of the jeans. Well, unusual things can and do happen, that's undoubtedly so, members of the jury."

19. Reliance is placed on the authority of *DPP v Rattigan* [2013] 2 IR 221 for the proposition that the judge, in effect, descended into the arena when marshalling the evidence, rather than seeking to assist the jury as to how they might deal with it, having regard to the fact that the case was based on circumstantial evidence. We think that the first thing to be said is that a charge is not what one might call a wish list of the parties. Secondly, it must be taken as a whole. Thirdly, the judge is entitled to comment upon the evidence in seeking to assist the jury in reaching their conclusion, making it clear at all times that the issues to be decided are for them, as he plainly did here. The judge must exercise caution lest he enter into the arena; in many instances it will be sufficient if he reprise the evidence couched in terms which will ensure that each party's case is put before the jury, and an explanation of the relevant principles of law will suffice. The judge, having regard to the complexity of the case, legitimately went

further than this but in our view went no further than the nature of the case permitted, on consideration of the charge as a whole. The portions quoted on behalf of the appellant cannot be treated in isolation as effectively it is sought to do. At no time could the jury have been led to believe that the decision or the view which they might take on any relevant fact was not solely a matter for them, as of course was the ultimate verdict. The exchange with counsel, the subject of criticism, did not undermine or disparage the cross-examination as alleged. It is not, nor cannot be seen to be, of any real controversy in the run of the case. It is an entirely typical exchange without any adverse implications. Still less could it have had any bearing on the charge or the decision of the jury. We are not persuaded accordingly that any fault can be found with the charge either on the principles elaborated in *Rattigan* or otherwise.

20. We accordingly reject this ground of appeal.

Ground Two – ***The Trial Judge wrongly ruled that evidence, (which was more prejudicial than probative or otherwise inadmissible), was admissible, despite objection on behalf of the Appellant at trial.***

21. On the second ground of appeal, the objection to the evidence of Dr Hannigan, was primarily on the basis that the circumstances of the retrieval of the clothing contained in one of two JD bags meant that innocent contamination could not be safely ruled out. Furthermore, objection was made to the admission of his report; in its context this appears to be a reference to an objection to the evidence itself. There was criticism of the approach taken by Dr Hannigan especially a supposed failure to make enquiries of the Gardaí, ascertain relevant facts, and engage in expert comment in the report itself; this was not, however, in our understanding, the crux of the objection.

22. Apart from the fact that the potential for environmental contamination generally was canvassed, reference was specifically made in cross-contamination to the possibility that the

clothes retrieved from the skip were so contaminated. At the trial (and we think ultimately the matter is pursued here on the same basis in substance), counsel for the appellant summarised the objection as follows: -

> "*My concern in relation to Dr Hannigan's report is that the report as it stands does not engage in any process of evaluation or quantification. Of course it could be said, well, that can all be left to cross-examination. In my respectful submission, that is not good enough, and I go back then to the quotation from Kingsmill Moore J. Evaluation is, I would submit, not just a component but an essential component of the expert's role in any trial and especially in a criminal trial of such seriousness as this.*
>
> *You have heard the evidence of Dr Willis in relation to the project that she is engaged in with the European Network of Forensic Institutes, seeking to adduce guidelines, and I can hand in a copy of that. That clearly is just a work in progress. I can give a copy to Mr Devally if that helps. I cannot and do not say that it is of the status of implemented guidelines, but it is to be noted that two sample reports are provided, furnished in that document. At page 106, there is a sample GSR, case 1, a sample report given and that is page 106 onwards, and then a second sample given at page 114. I can give Mr Devally my copy.*
>
> *In my respectful submission, as I said, as is the evidence of Dr Willis, this is an entity that is seeking to introduce a degree of standardisation across the European Union in relation to the evidence and reports of forensic scientists in the union. But it does set out as a template an appropriate type of standard that ought to be reached in such reports and it is manifest from consideration of Dr Hannigan's report that it doesn't come near those standards at all. Again, I say it's not sufficient, and perhaps I'm anticipating what Mr Devally will say, you can raise all this in cross-examination, but issues that require that are of significance are matters that ought to be dealt with by*

the expert. Indeed, there seems to be a recognition of that and I've already alluded to that sentence at the end of the paragraph dealing with background information: "If any of the above is incorrect, please inform me as a re-evaluation of my approach may be required."

So, in my respectful submission, Dr Hannigan's report in its current form ought not to be admitted, in fairness to the accused man in this trial."

23. The appellant further submits, on the basis of Dr Willis's evidence, that the European Network of Forensic Institutes were seeking to institute standardisation and that Dr Hannigan's approach was insufficient for trial, in light of the clear guidance on best practice. Having regard *inter alia* to this factor, the appellant argues that Dr Hannigan's evidence should not have been admitted before the jury on the basis that it created an unfairness to the appellant.

24. The defence, on the *voir dire* (and also here) made reference to *R v George (Dwaine Simeon)* [2014] EWCA Crim 2507; there, the appellant's conviction for murder was referred to the Court of Appeal (in fact, for a second time) by the Criminal Cases Review Commission, *inter alia*, because the conviction was based on forensic evidence that alleged gunshot residue was present on a coat of which he was the owner. The validity of the conclusions by reference to this evidence were called into question because of scientific developments since the trial. The Court of Appeal received the evidence of a Ms Shaw, a forensic scientist, and we will return to that below.

25. Counsel for the appellant both here and on the *voir dire* quoted from it in *extenso* although we cannot do so here. However, he opened his submissions to the trial court by quoting the following passage (which is at paragraph 35 of that judgement): -

"*This ground of appeal is formulated by the proposition that the gunshot residue evidence should not be admitted before the jury. Alternatively, it is argued that Penry-*

Davey J failed to give what would now be an appropriate warning relating to the limited significance that could be attached to such evidence."

26. Cross-examination took place in *George (Dwaine Simeon)* by reference to guidelines introduced in 2006 "*on the assessment, interpretation, and reporting of firearms chemistry cases*" by the former Forensic Science Service in England. As set out at paragraph 41 of the judgment "*this document deals with the prevalence of small numbers of particles of gunshot residue with the result, so it is argued, that the number and type of particles or residue found on the coat were so small… as to be at or near the level at which they could not be considered to have evidential value*". The number of particles was argued in that case to be so small that Ms Shaw said that "*very little by way of interpretation could be applied to finding such low levels of gunshot residue, not least because of the lack of background on residue in the external environment*".

27. Furthermore, Ms Shaw found only two particles on the coat containing lead, barium, and antimony which could be said to be characteristic of gunshot residue. Two particles containing barium and aluminium, which were indicative of residue, were identified but on the evidence, could have also originated from other sources such as fireworks (a further particle containing barium and aluminium was also found but this could not have been said to be gunshot residue). It is plain from the judgment, however, that whilst she was expressing the general principle about the limited interpretation that could be applied to a finding of low levels of residue, she had regard also to other factors which might have contaminated the coat with residue (e.g. an earlier shooting incident following which the appellant had been arrested).

28. In our view, this case is not authority for the exclusion of forensic evidence of this type. Moreover, in the judgment, Leveson P put the matter as follows (at paragraph 46): -

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

29. The trial judge found and held as follows in a preliminary ruling on the exclusion issue, which rejected the appellant's submission: -

"*Likewise, I'm satisfied that Dr Hannigan's evidence is admissible insofar as it goes. I am satisfied that given that there has obviously been an opportunity for investigation of it as far as it goes, that that is a matter I can take into account and that therefore, if competing expert evidence is not to be called, that leaves, as the only appropriate manner of dealing with it, Mr Sammon's undoubted ability as a cross-examiner in relation to the issues of weight that arise but the significance of it. Ultimately expert evidence is there to be accepted or rejected. It's there to assist the jury in forming conclusions that they're otherwise not capable of forming, based on the absence of everyday experience in relation to issues such as firearm residue, but ultimately they don't have to accept any expert evidence and if they feel that there are reasonable*

possibilities in the evidence which ought to lead them to reject the evidence, that they are entitled to do and that they will be told about in due course. But I can't say that the evidence is inadmissible simply because of an absence of compliance with an idealised format or that it doesn't contain, that Dr Hannigan didn't express various further evaluations that he might have."

The following day, the trial judge gave further reasons for his decision to admit the disputed evidence as follows: -

"*Turning then to the second issue as to the admissibility of the expert evidence of Dr Hannigan: I'm satisfied that of course expert evidence is admissible if it bears upon a subject upon which a court or jury could not be expected to have ordinary knowledge and where that opinion - because there's a certain skill or experience or judgment not possessed generally where that opinion may be provided for the assistance of the tribunal of fact in understanding matters which are outside their ordinary comprehension. The question of gunshot residue clearly falls within that and the question of scientific examination of items and trace evidence also clearly falls within that.*

I'm satisfied - and I don't think there was any real challenge to it - that Dr Hannigan is appropriately qualified to give the evidence that he's currently giving. And it is important that the potential scale and effect of such evidence be noted. Expert evidence isn't there by way of a prescription to a jury.

I will direct the jury, if it comes to that, in due course that it's there for their assistance and, if they discern a reasonable possibility which goes to contradict what is being put forward, they may reject that just as they may reject any other testimony on that basis.

So, it appears to me that the objections that Mr Sammon made could not go to admissibility. They go simply to weight.

Mr Sammon is entitled to call evidence if he so wishes - although I anticipate he is not going to do so from what I have heard - to contradict Dr Hannigan and the jury would have to resolve that contradiction according to the ordinary rules.

Alternatively, Mr Sammon may ask questions which he is doing very ably to deal with contrary scenarios and, on that basis, if Mr Sammon asks the appropriate questions - and he is in the course of doing that - he is thereby doing enough to raise issues that may be put before a jury. And the jury will be advised that, notwithstanding that they are dealing with expert evidence, if there is a reason upon the evidence, upon which they may entertain a possibility that there is some contrary and innocent proposition arising from that evidence, they will be instructed to act upon that in the ordinary way and they'll be advised that they are not here simply to rubberstamp the evidence of experts. It's here to help them and if they don't find it of help beyond reasonable doubt, they may reject it.

And obviously three scenarios arise in that respect. I'm not going to dwell on those. I have my own views in relation to that which I will keep to myself, both now and later on.

But those scenarios, so far as they are being dealt with by way of questions, are sufficiently raised to go before the jury when dealing with matters of weight and significance but they do not, of themselves -- because Mr Sammon is critical of the extent of evaluation or the format of reporting or, indeed, anything else, they're all matters that can be submitted to the jury for their consideration in due course, and a jury is not exempt and is, indeed, obliged to subject the expert evidence to the same

scrutiny as everything else and they will be so directed. So they're the two rulings in relation to the completed matters."

30. The appellant also contends that this is not simply a matter that can be remedied by cross examination – it was impossible for the evaluation of the expert to be appropriately reliable in all the circumstances and therefore the evidence should not have been admissible.

31. We reject the appellant's propositions. Every case must depend on its own facts and here the number of relevant particles significantly exceeded those found in *George (Dwaine Simeon)*. The extent to which Dr Hannigan, was informed (or not) of the facts and circumstances of an offence or seeks them out with a view to engaging with the evidence in general goes to weight and not admissibility. For what it is worth, Dr Willis herself was of this view. The witness was extensively cross-examined as to the merits of his views. Thereafter his evidence was a matter for the jury. The cross-examination was a procedurally sufficient basis for testing the evidence. Dr Hannigan's evidence must be seen in conjunction with the evidence of Dr Willis. There is no reason to suppose that the jury approached this evidence with anything other than care and weighed it in the ordinary way. The judge's approach, when adjudicating on the issue of admissibility, was thorough, careful and well-founded. Later, he dealt with the matter adequately in the charge.

32. We accordingly reject this ground also.

33. We therefore dismiss this appeal.