# In The Supreme Court of Bermuda

## CRIMINAL JURISDICTION

2009: No. 17

**BETWEEN:**

**THE QUEEN**

**- and -**

**DARRONTE LAVAR DILL**

The DPP, Mr. Mahoney and Ms. Sofianos for the Crown;
Ms. Weekes QC and Mr. Woolridge for the defendant.

## REASONS

1. This matter was tried between 24th November and 16th December 2009. At the end of the trial the defendant was found guilty by a unanimous jury of the two counts of murder on the indictment. The evidence against the defendant included (i) admissions made by him to another prisoner in an adjacent cell, which were overheard and recorded by two police officers, and (ii) admissions made by him in a formal interview under caution. The admissibility of those confessions was challenged, and I heard evidence on the voir dire between 26th November and 1st December 2009, and on 2nd December I gave a short oral ruling, refusing to exclude the confessions, and promised written reasons to follow. I now give those reasons.

2. The admissibility of the confessions was challenged under sections 90(2) and 93 of the Police and Criminal Evidence Act 2006 ('PACE'), and under the inherent jurisdiction, but I do not think that that adds anything to the statutory regime. Section 90(2) of PACE provides –

"(2) If, in any proceedings where the prosecution proposes to give in evidence a confession made by an accused person, it is represented to the court that the confession was or may have been obtained -

(a) by oppression of the person who made it; or

(b) in consequence of anything said or done which was likely, in the circumstances existing at the time, to render unreliable any confession which might be made by him in consequence thereof,

the court shall not allow the confession to be given in evidence against him except in so far as the prosecution proves to the court beyond reasonable doubt that the confession (notwithstanding that it may be true) was not obtained as aforesaid."

Section 93(1) of PACE provides –

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

3. The background to the case was that shortly after 5 a.m. on the morning of Sunday 21st September 2008 a fire was discovered in a shed on the shore on a spit of land behind the Black Horse Tavern in St. David's. The emergency services attended, and they found a body in a chair at the back of the shed completely engulfed in flames. The next day, Monday 22nd September, at about 8.30 a.m., a second body was found floating nearby in the waters of Smith's Sound, St. David's. The bodies were subsequently identified as those of Maxwell Brangman and Frederick Gilbert, two homeless men who frequented the area. Brangman had died from stab wounds and blunt impact trauma to his face. Gilbert had been stabbed thirteen times, and died of the stab wounds to his chest.

4. On Saturday 27th September a man called Roger Lightbourne senior ('Lightbourne senior') was arrested for the murders, because he had been named by a purported eye-witness, who came to be referred to during the trial as 'Mr. X'[1]. The defendant was then himself arrested on suspicion of the murders at about 7.30 p.m. in the evening of Tuesday 30th September. He was arrested at Lightbourne's house at 31 Tommy Fox Road, where

[1] Mr. X was subsequently wholly discredited, but that was not apparent to the investigating officers at the times material for this ruling.

he had been staying. That arrest had been the culmination of a series of events which provide important background to the confessions. The sequence was this – on Saturday 20th September, the day before the discovery of Mr. Brangman's body in the burning shed, the defendant went to 31 Tommy Fox Road to visit his friend, Roger Lightbourne junior ('Lightbourne junior'). He stayed overnight, and in the early hours visited two local nightclubs with the two Lightbournes, senior and junior. He then remained at 31 Tommy Fox Road until Wednesday 24th September when he was arrested at the house at 6.52 a.m. on suspicion of involvement in an assault at one of the nightclubs on Saturday night. He was held on that charge until Saturday 27th September. On his release he returned to 31 Tommy Fox Road[2]. He was then arrested on the murder charge at 31 Tommy Fox Road on the evening of 30th September.

5. After his arrest on 30th September the defendant was first taken to Southside Police Station, which is only a few minutes away. There he was documented and read his rights. I find that he was properly cautioned on his arrest by DC Bundy, and to the extent that the defendant denied that in cross-examination, I reject it. It is not clear whether he was cautioned again at the Station, but he was given a standard form notice which set out his rights. The form has not been put in evidence and so I do not know what it says, although the police evidence is that it contains a caution[3]. The notice does address his right to legal representation, and I find that that right was explained to him, and he then declined legal advice and signed the appropriate box on the Custody Record to record that he declined legal advice: it is a pro-forma and it reads "I do not want to talk to a lawyer at this time". I have no doubt that at that point he was fully aware of his right to remain silent and to legal advice, and indeed he accepted that in cross-examination.

6. It is the defendant's evidence that, in the car en route to Southside, DS Christopher said to him that the police had got his clothes and the knife and the gloves "from a guy named Buffy's house". The defendant says that he did not know what Christopher was

[2] The evidence later in the trial made it plain that he did not stay there that night, but returned to his grandmother's residence at 11 Fenton's Drive in Hamilton, although he then went back to 31 Tommy Fox Road the next day, Sunday 28th September, and then remained there until his second arrest.
[3] See DC Don DeSilva in chief.

referring to. DS Christopher did not give evidence on the voir dire so that was not put to him[4]. Nor was it put to DC Bundy, who was in the car, although in cross-examination the defendant said that he knew that Bundy would have heard it. However, I reject the defendant's evidence on this, as I do not consider him a credible witness. In any event, I do not think it relevant for the purposes of the voir dire as it is not the defendant's case that that induced him to confess. It is the defendant's case that he had no idea what Christopher was talking about.

7. There was also a suggestion that the officer in charge of the case, D.I. Daniels, had given instructions that the defendant not be allowed to contact a lawyer. This was based entirely upon an entry in the custody record which states "NOTE: by order of Chief Inspector Daniels, prisoner Dill was not allowed to telephone Lois Astwood or any one at this time". In cross-examination D.I. Daniels explained that that meant not to contact anyone other than a lawyer. I absolutely accept his evidence on that, which is entirely consistent with the way the police treated the defendant throughout. It is supported by the entry on the custody form under the heading "Notification of Named Persons Requested". The defendant identified two named persons, one of whom was Lois Astwood, and then the custody officer had written "No calls by order of C.I. Daniels". I think that that is all that the other entry meant, and that it does not support the inference which defence counsel seeks to draw from it. In any event it is a red-herring, as the defendant accepts that he indicated that he did not want a lawyer and does not challenge the entry in the custody record to that effect.

8. Once the defendant had been processed at Southside Station, he was then taken to Somerset Police Station, at the opposite end of the Island, by DS Christopher and DC Bundy. DC DeSilva accompanied them as far as Prospect, which is about half way between the two, where they dropped him off.

[4] For the record, the point was put to DS Christopher in the subsequent trial, and he denied it. A further allegation against DC Bundy about what happened en route from Southside to Somerset, namely that he showed the defendant an entry in his notebook saying that Dill was the guy to see about the murder, only emerged tangentially on the voir dire, and was again not put to Bundy That allegation emerged more clearly in the main trial.

9. At about the same time that evening Lightbourne Senior, who had been in custody since the 27th, was being escorted from Hamilton Police Station to the Identification Suite at Prospect Police Headquarters where he was to participate in an identification procedure. He was accompanied by DCs Henry and Mathurin. According to DC Henry, on the way Lightbourne senior started to protest his innocence and to say that his son may have been involved, and on arrival he suggested that he could assist the police in getting the real killers, and he suggested that they place him in the cells with the defendant and listen to the conversation.

10. DC Mathurin gives a fuller and more colourful account of how the proposal emerged. He adds various details, such as Lightbourne senior saying 'go easy on my son' and that 'Ronte', meaning the defendant Darronte Dill, was the person they should focus their attention on. According to Mathurin, Lightbourne senior then went on to explain how the defendant had to kill to be accepted, and that there was a hierarchy in which Lightbourne senior was the general, his son was a lieutenant and the defendant a foot-soldier. Although there was some cross-examination as to why this was not put into a statement until six months later, and what happened to his contemporary notes, I did not understand the thrust of this evidence to be challenged. Indeed, it is the defence case, supported by the evidence of these two officers, that the proposal for the operation in the cells came entirely from Lightbourne senior at a time when there was apparently a strong case against him, and when he had every motive to implicate someone else. I accept all of that.

11. To cut a long story short, that proposal was considered and adopted by Lightbourne's lawyer, who was in attendance for the identification procedure, and was eventually accepted by the senior officer in the case, Chief Inspector Daniels, after he had consulted with and obtained express approval from crown counsel in the DPP's Chambers. Indeed, according to him it was crown counsel who insisted on the use of a recording device, and that Lightbourne's lawyer was not told about that. He also said that there was an instruction that Lightbourne himself not be told about that. I accept Daniels' evidence on all of that. I also accept his evidence that he was hoping that Lightbourne senior would in fact implicate himself. There is no suggestion that any "deal" was done with Lightbourne

senior or his lawyer, and indeed the evidence is against it as he was himself charged with the murders the next day and then kept in custody for several months, only being released when it was established that Mr. X was discredited. Nor is there any evidence that Lightbourne senior was given any instruction by the police as to what to say or ask, or how to conduct himself, and indeed DC Henry expressly said that he did not know the specifics of what Lightbourne would ask.

12. DCs Henry and Mathurin were then assigned to put the plan into effect. It was done that night, the defendant being brought from Somerset. Lightbourne senior was put in one of the holding cells at the top of Hamilton Police Station. DCs Henry and Mathurin concealed themselves in the adjacent cell on one side, and then the defendant was introduced into the adjacent cell on the other side. The lights were turned out and the jailer left, and a conversation then followed between the defendant and Lightbourne, which the officers both overheard and recorded. Lightbourne, of course, knew of the presence of the officers. I accept the police evidence that he did not know of the fact that the conversation was also to be digitally recorded. The defendant, of course, was unaware of either fact.

13. There is no question but that all this was done by the police in the hope of obtaining evidence and even a confession from the defendant. It may well be that Chief Inspector Daniels, the officer in charge at that point, also hoped that Lightbourne might incriminate himself, but that does not detract from the fact that this was set up with the purpose of tricking the defendant into saying things which he was unlikely otherwise to volunteer to the police. I put it that way because the defendant had not at this stage been interviewed or invited to make a statement, and so there is no way of knowing what he would have done had that happened first. But there is nothing to indicate that he was eager to confess to the police at this point. Nevertheless that is apparently what he went on to do to Lightbourne.

14. At the end of the conversation the defendant was removed from the cell. DCs Henry and Mathurin went back to Prospect and recorded what they had heard in the form of

written statements, and they gave the recording device to a technician to extract the record. They did not themselves listen to it at this stage.

15. The recording itself was proved in the voir dire and was played to me. I think that both sides accept, and it is certainly the case, that the quality is poor. It is something of a curate's egg - there are passages which are inaudible or incomprehensible, and other passages which are fairly clear, and there are parts in between. There was also a transcript that had been prepared by the same agency that does the transcription of the recordings of court proceedings. The transcript was not formally proved on the voir dire[5], but I allowed it to be used as an aid to understanding the tape, while bearing firmly in mind that the tape was the evidence, not the transcript. In the end it came to be used by both sides as a way of structuring a critical analysis of the tape, although neither side fully accepted its accuracy. I have used page and line references from the transcript in this judgment, as a way of indicating what part of the tape I am referring to. The defendant gave evidence about his own construction of the tape, and particularly of so much of it as is represented by the first five pages of the transcript. I accept some of his evidence on that. For instance[6] at p. 2, l. 12[7], I do hear him saying that it was just his nephew's school stuff on the phone. At p. 3, l. 8, and elsewhere, I accept that it is "Ronte" and not "Roger". Lightbourne does seem to ask "what do you think about 15 years?" At l. 24 I do hear "They gave back your phone" and not "They gave back your clothes". At l. 29 I think it is "Sheep thing" ('Sheep' being the soubriquet of Gregory Outerbridge, the victim of the alleged assault at Ovations nightclub) and not "shooting". On the other hand, at p. 1, l. 15 I do not hear "don't call my name" in the gap. On p. 2, l. 6, I do not hear "you" at the end – i.e. I do not hear "I gave it to um-um you"; and at l. 23 I do not hear "that's what the officer Christopher told me." More importantly, as I explain further below, I do not hear the threatening tone contended for by the defendant and I certainly do not hear anything

[5] In the main trial it came in by consent (though not as an agreed text) as Exhibit 24, and I directed the jury accordingly.
[6] This short list is not intended to be exhaustive either way.
[7] All references in this judgment are to the page references given in the defendant's evidence on the voir dire, and not to the schedule of corrections to the transcript produced by the defence, which did not always accurately reflect that evidence.

suggesting that he make a false confession or take the blame for something that Lightbourne himself really did.

16. The next morning DCs Bundy and Thorpe conducted a formal interview with the defendant which was taped in the standard way. Before conducting the interview DC Thorpe contacted Legal Aid to get a lawyer for the defendant, and eventually they assigned a lawyer who came to the Police Station and was given 10 minutes alone with the defendant before the interview commenced. The interview then commenced in the normal way, with a caution and an explanation from the police. Thorpe ascertained that the defendant was satisfied with his lawyer and the advice he had been given, and he also informed him that he could stop the interview at any time to consult with his lawyer. When that was done Thorpe put to the defendant a synopsis of what DCs Henry and Mathurin had overheard in the cells the night before and asked if that was what he had said. The defendant immediately confirmed that it was, and then, through the course of the following interview, essentially confessed.

17. The defendant himself gave evidence on the voir dire. He said that he was friends with Lightbourne junior but barely knew Lightbourne senior having only met him 3 or 4 times before. He knew that he had a criminal record but did not know the specifics. He also said that he knew from the word on the street that he was not a person he should hang around with, and that he would get him into a lot of 'dumb trouble'. He also said that his visit on 20th September was the first time that he had been to 31 Tommy Fox Road. On that evidence there was nothing to suggest that the defendant regarded Lightbourne senior as a person in authority. It is possible that the defendant was not telling the entire truth about this relationship with Lightbourne senior or his visits to 31 Tommy Fox Road, but I considered that for the purposes of the voir dire I ought to take the defendant's case on this at face value, and ought not to speculate about matters on which I had little or no evidence.

18. It was the defendant's case on the voir dire (and indeed at trial) that in the conversation in the cells Senior addressed him in an aggressive and bullying tone, and by things he said and by his manner conveyed to the defendant that he wanted him to take the blame – "take the rap" – for the murders and that the defendant was intimidated into doing so. I rejected that on the facts. There were several reasons I did that.

19. First, the police witnesses in the next cell did not support that. They were present and were well placed to hear if that sort of thing had gone on. There is nothing in their evidence in chief to suggest the defendant's version, and it was not put to them in terms in cross-examination. The nearest counsel came was in cross-examining DC Henry, when page 2, line 15 of the transcript was put and he replied that it did not appear to him that Lightbourne senior was being hostile at that point, and so it did not raise a concern.

20. Second, I did not hear that myself on the tape. It may well be that Lightbourne senior has a coarse and vulgar manner of speaking, but he did not seem unduly threatening or aggressive in what can be heard. I did bear very firmly in mind that the tape is incomprehensible for large sections, but not in a way that would allow the defendant's version to be true. In particular, when pushed as to where he says that Lightbourne senior conveyed his message, the defendant pointed to page 4, l. 1 of the transcript, and the words "but listen to me now" and says that that, and the way it was said, was what told him that Senior wanted him to 'take the rap'. I have listened carefully to the tape at that point and simply do not accept that.

21. Third, the details of what the defendant confessed match closely the reality found at the scene and on post mortem examination of the deceased. That is unlikely if the defendant was just making it all up, so he has to have had some way of knowing the facts. He explains that by saying that on Sunday 21st September, the morning after the killings, just before they all went off to church, Lightbourne senior took him aside and made a full and detailed confession to him. I find it inherently incredible that Lightbourne would do that to a young man whom he hardly knew. In this respect the defendant was cross-examined on how well he knew Lightbourne senior and was adamant that he had only

met him twice before going to 31 Tommy Fox Road on the 20th September: once on Court Street in 2006 for two minutes, and again in the summer of 2007 when they had a conversation for 10 minutes. There is also the point that the defendant remained at 31 Tommy Fox Road after having received this confession until his first arrest on Wednesday 24th September. The defendant explained this by saying that he was afraid to distance himself from Lightbourne senior lest he come to mistrust him, but I did not find that very plausible. The reality was that he had ample opportunity to leave safely. Indeed, as was put to him in cross-examination, the Lightbournes were arrested on Monday 22nd, but he did not leave then, and instead remained at the house until his own arrest on the Wednesday. Then, when he was himself released after that first arrest on Saturday 27th September, he returned to 31 Tommy Fox Road[8].

22. Fourth, the defendant's version of this conversation with Lightbourne senior has Lightbourne saying that he committed the murder alone, but in the conversation in the cells the defendant implicates Lightbourne junior, and indeed goes so far as to say that the whole thing was junior's idea. If he really was saying what he did say to placate Lightbourne senior it is simply not clear why he would gratuitously introduce the son as an accomplice. Nor is it consonant with the recording, where, at page 17, lines 16 – 18, Lightbourne senior appears to express surprise at the degree of his son's involvement. The defendant explains all this by saying that he was implicating the son because that's what Lightbourne senior was telling him to do, and that he was telling him that by saying "you guys" to him. But it is hard to see how the questions that we can hear on the tape contain such a suggestion. For instance, at p. 4, l. 8 of the transcript, "What the fuck made you guys do that, man?" is on the face of it a straightforward question which does not carry the freight which the defendant seeks to place on it.

23. Finally, I rejected the defendant's evidence because, having seen him give evidence and be cross-examined, I formed a poor view of his credibility. Putting it all together, I

[8] As noted above, the evidence later in the trial made it plain that he did not stay there that night, but then returned to his grandmother's, although he went back to 31 Tommy Fox Road the next day and then remained until his arrest. That detail was not apparent on the voir dire, but in my judgment it does not detract from the point. Indeed it reinforces it.

was quite sure that the defendant was not telling the truth, and that his explanation for how he came to make the admissions in the cells was totally false. Instead, I find that he said what he did in the cells because he found himself in the next cell to the father of his friend, and believing that they were alone, confessed freely to him.

24. It also follows that I rejected the defendant's explanation for why he made the admissions he did in the formal interview the next day. His explanation for that was that he was still operating under the influence of Lightbourne senior and was taking the blame as senior wanted him to do because he was threatened by him and scared for his life. I think it important that that is his explanation for the formal interview. It is not that he was tricked or trapped by the police. He does not say that hearing the conversation of the night before relayed back to him robbed him of his volition, or confused him, or any of the other things that he might have said. His evidential case is that he went on deliberately to take the blame because he was operating under Lightbourne senior's duress. I rejected that explanation on the evidence for the reasons given above.

25. Had the defendant's case been different, there may have been points that could have been made. For instance, in the cells Lightbourne senior is plainly telling him that his clothes and gloves had been recovered by the police[9]. That was not true. Similarly, Lightbourne was saying that some video recording might still be recoverable from the 'hard-drive' of the defendant's cell phone[10]. That appears to have been a fabrication of Lightbourne's and no such evidence was ever recovered. Such things might have led a guilty man to throw away his shield, in the false belief the game was up, but would have no effect upon an innocent one. As it is, the defendant ran the case that he had no idea what Lightbourne senior was talking about. And in respect of the cell-phone, his case on

[9] To the extent that the defendant also attributes the same thing about the clothing to DS Christopher, I reject that: see above. He also says that he referred to that in the conversation in the cells with Lightbourne senior, and he points to p. 2, l. 23 of the transcript, where he claims he said "that's what the officer Christopher told me" which has not been transcribed. I have listened to that passage, but I do not hear that on the tape.

[10] The significance of that only emerges from the defendant's interview, where he says that he used the phone to take a video of Brangman: see Exhibit 19C, page 23. It is, notably, not a component of the Sunday morning admissions which the defendant attributes to Lightbourne senior.

that was that he had given the phone to Lightbourne senior on the night of the 20th September and he retained it until the Monday.

26. There are also passages where Lightbourne senior appears to be urging the defendant to confess and show remorse in the hope of a lighter sentence (e.g. pp. 14 and 15 of the transcript). There is nothing to suggest that Lightbourne senior was put up to that by the police, or was saying that on their behalf. Similarly the defendant (who had no idea that this conversation was a set-up and that there were police listening) had no reason to treat that as emanating from the police or any person in authority. The defendant expressly disavows any long acquaintance with Lightbourne senior or that he was in some way a mentor or authority figure for him. I therefore reject any suggestion that the subsequent confession to the police the next day was prompted by that consideration. Indeed, I consider that he said what he did in the interview because, having been told that his conversation of the previous evening had been overhead, he realised at that point that the game was up.

27. Nor could the admissions in the cell have been prompted or obtained by anything said by Lightbourne about the mitigating effect that confessing and showing remorse might have on any sentence. This is for the simple reason that the defendant did not know that the police were listening, and so any desire for leniency could not have been an operating factor when he said what he did to Lightbourne during their conversation. Rather, it is plain that he was induced to say that by a false sense of security in their privacy. As he himself said towards the end of his cross-examination, if he'd had any clue that anyone was listening he would have kept his mouth shut.

28. As to whether the overall situation was itself so unfair that I should reject the evidence of the confessions, I was taken to a lot of law on the subject of overheard and staged conversations, including the helpful review of the authorities in Bailey and Smith (1993) 97 Cr. App. R. 365. There is also local law on the subject in the decision of the Court of Appeal in Curtis Dearing v The Queen Cr. App. No. 44 of 1985 (11th December 1986). I do not think that I need go through the law in detail. The thrust of it is that such

a set-up is not *per se* unfair, but each case is a matter for the exercise of the trial judge's discretion on the particular facts of the case before him. Thus in Jelen and Katz (1990) 90 Cr. App. R. 456 at 464, Auld J (as he then was) said:

> "It is true, as submitted by counsel for Katz and Jelen, that this case went beyond the deliberate overhearing of a defendant in conversation. It involved the instigation by Dempsey of a recorded discussion with Jelen in which he deceived Jelen. There was undoubtedly an element of entrapment. But did that make it unfair so as to require the judge, in the exercise of his discretion, to exclude the evidence? He took the view that it was not unfair, and we can see no reason to disagree with him. . .
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> As to the reliance upon H, we observe first that the discretion of a judge whether or not to exclude evidence under section 78 of the 1984 Act is made as a result of the exercise by him of a discretion based upon the particular circumstances of the case and upon is adverse effect, if any, it would have on the fairness of the proceedings. The circumstances of each case are almost always different, and judges may well take different views in the proper exercise of their discretion even where the circumstances are similar. This is not an apt field for hard case law, and well-founded distinctions between cases."

29. As I said in giving my oral reasons, I felt that the basic situation in this case was well within the parameters of the decided cases. In particular, while it was plain that Lightbourne senior had a strong motive for getting the defendant to confess in order to exculpate himself, such a motive was not fatal in Roberts [1997] 1 Cr. App. R. 217 (CA), and I do not see why it should be here. I do not think that Lightbourne could be described as a police stooge, and he had been given no instructions on what to ask. No deal had been done with Lightbourne, and indeed I accept Chief Inspector Daniels' evidence that he was hoping that he would incriminate himself, and to that extent both men were being treated equally. The stratagem had been formally approved by the officer in charge of the case and by his 'supervisor' (although Daniels did not give the rank or identity of that person) as well as by crown counsel. The latter had insisted on it being recorded, and that added to the fairness of the proceedings as it would – subject to the exigencies of the poor quality of the recording – allow for greater confidence in the record than if it was based solely upon the unaided recollection of the officers in the adjacent cell.

30. Ms. Weekes placed great weight on the fact that the defendant had not yet been formally interviewed, and indeed that Chief Inspector Daniels had determined to postpone that until the next day due to the lateness of the hour and the fact that the defendant was unrepresented. I do not think that that is a decisive factor against admission: if he had been interviewed he would either have admitted the offence, in which case the stratagem would have been unnecessary, or he would have denied it or remained unresponsive, in which case the investigators would have been in the same position. Indeed, in Jelen and Katz *(supra)* the fact that the defendant had not yet been interviewed was seen as a positive factor in favour of admitting the evidence.

31. Nor did I consider that this defendant was in any sense vulnerable, despite his young age. He had turned 18 on the 24th September, the day of his arrest on the assault charges, when he had been held for three days and released. He had, therefore, recent first-hand experience of police custody procedures and knew his rights, as he admitted in cross-examination. He also volunteered in his evidence-in-chief that he had a previous conviction for receiving[11]. There is nothing to suggest any mental handicap or other vulnerability, and indeed he struck me as a street-wise and 'savvy' young man. Nor does he say that he was in any way intimidated or confused by the fact that he was in custody or by the setting. His case is that he was intimidated by Lightbourne senior, and by his aggressive and angry manner. Once that is rejected there is, in my judgment, no other reason left to reject the evidence concerning that conversation.

32. As to the formal interview the next day, I think that that was conducted with scrupulous fairness and in accordance with the rules. Although the defendant only had ten minutes alone with his lawyer before it began there is nothing to suggest that that length of time was not of his own choosing or that he wanted or needed more. He was not, of course, aware that he had been overheard at that point, but I do not think that the police interviewers were in any way obliged to give him or his lawyer advance notice of that fact.

[11] In fact he was not wholly frank concerning his previous convictions, as it emerged later in the trial that he also had a conviction for possession of a bladed article, but I did not know that at the time.

33. For the above reasons I was satisfied so that I was sure that the defendant's confessions had not been obtained by oppression of the defendant or in consequence of anything said or done which was likely, in the circumstances existing at the time, to render them unreliable. I also saw no reason to exercise my discretion so as to refuse to allow evidence of the confessions to be given, because it did not appear to me, having regard to all the circumstances, including the circumstances in which the confessions were obtained, that their admission would have such an adverse effect on the fairness of the proceedings that I ought not to admit them.

Dated this 19th day of January 2010

Richard Ground
Chief Justice