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R v Vincent Tabak [2011]; Case number T20117031

Case comment by Sally Ramage[1]

This is an extended case comment on the recent murder trial of Vincent Tabak who was found guilty of killing 25 year old Joanna Yeates.

Case citations:

Attorney-General's Reference No. 3 of 1999: Application by the British Broadcasting Corporation to set aside or vary a Reporting Restriction Order [2009] UKHL 34;
Miller v Lenton, 3 Cr.App.R.(S.) 171, DC; *Pringle v R*, unreported, January 27, 2003, PC [2003] UKPC 17;
R v Adams, The Times, January 28, 1999; *R v Bristol Crown Court, ex p. Bristol Press and Picture Agency Ltd*, 85 Cr. App .R. 190, DC; *R v Doheny and Adams* [1997] 1 Cr.App.R. 369, CA; *R v* G [2004] 2 Cr.App.R. 38, CA; *R v Hookway* [1999]; *R v Khandari*, unreported, April 24, 1979; *R v Mitchell*, The Times, July 8, 2004, CA; *R v Nunu*, 12 Cr.App.R.(S.) 752, CA; *Sturla v Freccia* (1880) 5 App. Cass. 623, HL; *Irish Society v Bishop of Derry* (1846) 12 Cl. & F. 641; *Wilton & Co .v Phillips* (1903) 19 T.L.R. 390;

Statutes:

Constitutional Reform Act 2005,s.59(5), and Schedule 11, paragraphs 1 and 26; Statutory Instrument 2005 No. 384;

Introduction

This murder case was tried at Bristol Crown Court in October 2011. The Crown Court is the correct jurisdiction for a murder trial. The status, jurisdiction and manning of the Crown Court is governed by the Constitutional Reform Act 2005,s.59(5), and Schedule 11, paragraphs 1 and 26 and by certain sections of the Criminal Procedure Rules 2005 See the Statutory Instrument 2005 No. 384.
Vulnerability to violent crime victimization varies across the age spectrum. The victimization rate increases through the teenage years, crests at around age 20, and steadily decreases through the remaining years. This pattern, with some exceptions, exists across all race, sex, and ethnic groups. See the American Justice article by C.S. Perkins, titled, "The vulnerability of victims of serious violent crimes" in Issue 163021, *NCJ*, July 1997.
Bristol is an area of England with much crime. As for sexual related crimes, the following illustrate the problem that Bristol has with sex crimes. On Saturday 1 October 2011, Avon a serious sex assault took place in Bristol between 9.15pm and 10.30pm when a woman dressed in fancy dress became separated from a group of friends as they entered a nightclub in the Park Street; was befriended by a man who led into an alleyway and subjected to a serious sexual assault. Police described the suspect as a stocky, broad shouldered, clean-shaven, six foot, and fair- haired, white male, aged in his thirties, with short hair, who was wearing a black bomber jacket and black jeans and who spoke with a local accent. This sex assault occurred in a very busy part of Bristol. On 18 September 2011, police released news of a sex assault which occurred in an underpass near the YMCA in Lawrence Hill on September 18. The suspect is male, black, bald, skinny, about 5ft 7in tall, has bad teeth and a strong African accent.

The murder ha this trial relates to

Joanna Yeates was a 25 year old woman who was murdered on 15 December 2010. Her body was discovered on 26 December 2010 and on 23 January, her next door neighbour Dr Vincent Tabak, a highly qualified Dutch

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architect working in Bristol, was arrested and charged with her murder. The trial began at Bristol Crown Court, Small Street, Bristol, on Monday 10 October 2011.

The defendant

The accused, Vincent Tabak is a 33 year-old professional man- a doctor in software programming for architecture and engineering and a specialist in people flow engineering. He denied the premeditated killing of Miss Yeates, whose body was found by dog walkers on a snowy verge on Christmas morning. Vincent Tabak is a recent neighbour of Miss Yeates and her boyfriend Greg Reardon, both employees in an architects' firm in Bristol. In fact Dr Tabak and his girlfriend Miss Morston, a qualified analyst working for a multinational firm of chartered accountants, had been living at Flat 2 of the detached property, 44 Canynge Road, Bristol, whilst Miss Yeates and Mr Reardon had only recently moved into the next-door Flat 1 in November whilst Dr Tabak was working in Los Angeles. So Dr Tabak did not know them. Dr Tabak returned to the United Kingdom on 11 December 2010. Miss Yeates had taken a few days off at the same time, having had a cold and had returned to work on 14 December 2010.

On Friday 17 December 2010, after Greg Reardon has left for Sheffield, Miss Yeates went to *The Bristol Ram*, a public house near her place of work, in order to socialise and have some drinks with people she knew. Having imbibed in several drinks there, she decided at 20.00 hours to go home and proceeded to walk home, stopping en route to buy two bottles of cider and one ready-made pizza.

At 17.00 hours on Friday 17 December 2010, her boyfriend Greg Reardon had travelled to Sheffield (using her car) to visit his brother and is alleged to have arrived back at Flat 1 on Sunday, 19 December in the evening at 20.00 hours. As Miss Yeates was not at home he waited but when she did not arrive back at midnight, he telephoned the police to report her as a missing person. He did this at 1.00 am on Monday morning 20 December 2010. He then telephoned Miss Yeates' parents who live in Ampfield in the county of Hampshire, England, and they travelled to Bristol immediately.

Dr Vincent Tabak returned to the United Kingdom from Los Angeles on Tuesday 14 December 2010. He returned to his usual work routine immediately, riding on his bicycle from Flat 2 to the train station where he travelled by train to his place of work every day. He is alleged to have strangled Joanna Yeates on Friday evening after she returned from the public house and whilst his girlfriend Miss Marston was attending her firm's annual Christmas party that evening. His girlfriend had travelled to the Christmas party by coach, arranged for all the staff and Dr Tabak had planned to collect Miss Marston from the coach station on its return after the party was over. Miss Marston owned a grey car, which they both used, in a similar way that Greg Reardon and Joanna Yeates used her car. He is alleged to have killed Miss Yeates whilst his girlfriend was away; to have gone shopping in an *Asda* supermarket at about 22.30 that evening, having driven around Bristol to look for a suitable place to deposit Miss Yeates' body and having found one, did the deed before collecting his girlfriend from the coach station after midnight and returning home, stopping off briefly to buy them both a take-away meal which they ate on their way home in the car, the prosecuting counsel told the court on the first day of the murder trial, Monday 10 October, 2011. Evidence of facial mapping may of itself be sufficient to justify leaving a case to the jury: *R v Hookway* [1999].

The murder which defence argued as manslaughter

Joanna Yeates was a 25 year old woman who was murdered on 15 December 2010. Her body was discovered on 26 December 2010 and on 23 January, her next door neighbour Dr Vincent Tabak, a highly qualified Dutch architect working in Bristol, was arrested and charged with her murder. The trial began at Bristol Crown Court, Small Street, Bristol, on Monday 10 October 2011.HEe courtroom

The courtroom

The trial took place at Court 1 of Bristol Crown Court - a modern, busy court. The public area in courtroom number one is itself very small, with a capacity to hold some two dozen members of the public. Although it is a refurbished courthouse, with cafeteria facilities, electric lifts from the ground floor to he first and second floor,

courtroom one had he distinct feel of an old style courtroom, and resembled the old courtrooms at Southwark Crown Court which has a public gallery area slightly more generous in seating and size. Alhough there were TV monitors in front of the jury and in front of the defence and prosecuting counsels, the prosecution's main booklet of extensive lists and maps was not put onto the system but was instead handed out in an A3 book form, a much more difficult way of assimilating that vital main prosecution evidence. Instead the TV monitors were used to show certain google maps and the Asda CCTV clip of the instance when Tabak shopped here; of the Bristol Ram CCTV and of Tabak on the road shortly before he was arrested in January 2011.

The jury of twelve persons

Six men and six women were selected after a three-day process to pick jurors for the four-week trial at Bristol Crown Court. The jury was sworn on 7 October, 2011. The court clerk told the jury that Vincent Tabak was charged with murdering Joanna Yeates between 16 and 19 December last year. He informed the jury that the defendant had pleaded '*not guilty'* and that it was the jury's job to say whether he was guilty or not. The judge warned the jurors to avoid reading any background material and not to speak to anyone about the case. On Wednesday, 13 October 2011, His Honour Justice Field, the jury and a selection of journalists visited the crime scenes, accompanied by police officers. It is of note that none of the jury were from any ethnic minority, even though Bristol has a population of mixed races.

Jury visiting protocol

After prosecuting counsel had summed up his case against Dr Tabak by mid-morning on Tuesday 12 October 2010, the rest of the day was taken up with agreeing a jury visiting protocol. It is of note that in the United Kingdom, there is no general *Jury Visiting Protocol* in the United Kingdom but in cases such as this murder trial, a protocol must be agreed between the judge, the prosecuting counsel and the defence counsel.

The judge and jury visit the crime scene

The judge and the jury visited the flat where Joanna Yeates was killed. The six-man, six-woman jury was taken from Bristol Crown Court to key locations in the case. The jury retraced the route she took that evening, up Park Street and past the Bristol Ram public house, where she had met work colleagues and had had a few drinks with them The judge and the jury also visited the *Waitrose* grocery shop Miss Yeates had visited, as well as the *Tesco Express* grocery shop where she bought a pizza on her way home on Friday evening 17 December 2010. The visit also took in Flat 2, 44 Canynge Road, the place where Dr Tabak and his girlfriend lived and the property of 53 Canynge Road, where a party was held on the night of 17 December; they also visited Percival Court, adjacent to the rear of Miss Yeates's flat because witnesses claimed to have heard screams that night- one witness standing at 53 Canynge Road and the other from Percival Court opposite the property of 44 Canynge Road. The party also visited the place where Miss Yeates' body was found at Longwood Lane in Failand, North Somerset, a few miles from Canynge Road. Whilst Justice Field travelled in an unmarked police car, the jury travelled in a secure coach with blacked-out windows- to hide their identification from the public.

Press reporters were included in the visiting party

Press reporters chosen to accompany the party of judge, police and jury, reported that the flat where Miss Yeates lived has not been tampered with, everything remaining as it was on that night of 17 December 2010. During the visiting protocol discussion, defence counsel William Clegg QC, requested that the jury take note of how many minutes it takes to walk from the *Hophouse* pub in Clifton- named *The Bristol Ram*, to 44 Canynge Road where Miss Yeates lived. Defence counsel had requested that the jury take a particularly close look at the view from Miss Yeates's kitchen window, which looks on to the path to the front door because Dr Tabak had made a statement that Miss Yeates and Dr Tabak first saw each other through this window. Defence counsel also asked the jury to walk from 44 Canynge Road to the front door of number 53 in order to ascertain whether in the jury's judgment they thought it possible that a scream that was made inside the flat of number 44 could possibly be heard if you are standing outside number 53 Canynge Street, Bristol. Following the site visits, the jurors were

sent home for the day and trial continued in Court 1, Bristol Crown Court, the following day on 14 October 2010.

Could Miss Yeates see a passer-by from her kitchen window?

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The court actors: the court; the judge; the jury; the defence and prosecution counsel; the experts

Below is a brief introduction to the actors in this murder trial. For teaching purposes, it is important to make law students aware of who the actors in a certain case are. Their attitudes, past performance and background often assist in he confidence of the case decision.

The court: Bristol Crown Court in Small Street, Bristol

This murder case was tried at Bristol Crown Court in October 2011. The Crown Court is the correct jurisdiction for a murder trial. The status, jurisdiction and manning of the Crown Court is governed by the Constitutional Reform Act 2005,s.59(5), and Schedule 11, paragraphs 1 and 26 and by certain sections of the Criminal Procedure Rules 2005 See the Statutory Instrument 2005 No. 384.
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Joanna Yeates, Landscape Designer at BDP

Joanna Yeates was a 25 year old woman who was murdered on 17 December 2010. Her body was discovered on 26 December 2010 and on 23 January, her next door neighbour Dr Vincent Tabak, a highly qualified Dutch architect/engineer, working in Bath, near Bristol, at the international architectural consultants Buro Harrap Ltd, was the second person arrested on suspicion of the Yeates' murder and then charged on 23 January 2011 with her murder. The trial began at Bristol Crown Court, Small Street, Bristol, on Monday 10 October 2011. At first the Bristol police arrested the landlord Chris Jeffries, (partly because Vincent Tabak and Tanja Morson reported to the police that they saw Chris Jefferies spying through windows and letting himself in with his own keys to Flat 1 where Yeates and Reardon lived). Then later, police arrested and charged Vincent Tabak, who lived with cohabitee Tanja Morson in the flat next door to Joanna Yeates. This trial was stupendous in that the majority of prosecution evidence, apart from the post-mortem, was circumstantial and the only real evidence was the post mortem result and out of the mouth of the defendant who seemed in an automated state and psychiatrically distressed state, totally ignored by his defence counsel, William Clegg, QC, the judge, Justice Field, and the prosecuting counsel, Nigel Lickley, QC. as Mr Lickley rudely and crudely verbally and psychologically badgered the defendant for hours and hours in the witness box.

Mr William Clegg, QC, had pleaded with the judge, Justice Field, to accept the plea of manslaughter but Justice Field was adamant that it should be murder. This point cannot be raised as a point of law for appeal because in *R v Archer* [2011] All ER (D) 130 (Sept), the Court of Appeal, Criminal Division, held that the judge had not erred in rejecting a submission of no case to answer where there was sufficient evidence for a jury to convict a defendant. In *R v Tabak*, this "sufficient evidence" came in the form of Vincent Tabak's self-confession.

The judge

The trial judge was Mr Justice Field. Mr Justice Field may be given the label of "a lawyer' lawyer". He has a fair sense of justice and an advanced and wide knowledge of the law, both commercial and criminal. In a recent case in the House of Lords, important questions of principle were decided on. The case was *Attorney General's Reference No. 3 of 1999: Application by the British Broadcasting Corporation to set aside or vary a Reporting Restriction Order* [2009] UKHL 34.

The Court of Appeal decided that there was no scope for extending the wording of an order preventing reporting of criminal proceedings under the Children and Young Persons Act 1933(section 39) beyond the words in section 39, subsection 1. Therefore the order restricting the identification of this adult defendant and the nature of the case against him was quashed. *Gazette Media* had appealed against the order made under the Children and Young Persons Act 1933 s.39, restricting the publication of reports in relation to criminal proceedings in which the defendants in those proceedings had pleaded guilty to offences under the Protection of Children Act 1978 s.1 and were convicted of conspiracy to rape the first defendant's child. The order prohibited the reporting of any proceedings in respect of the defendants and the victim. The order also prohibited the identification of the first defendant by name or otherwise. Subsection 1 of section 39 of the Act permitted the wording of an order to exclude things that would otherwise fall within the restriction.

In 2004, in another important case, Mr Justice Field ruled that a terrorist suspect had been illegally detained for 14 days. He appears to be a stickler for the rule of law. In 2004, Mr Justice Field sat to decide a high profile case involving an Egyptian national- a case that was politically sensitive. In July 2004, Mr Youssef, an Egyptian national, won his High Court case against the government for false imprisonment after Justice Field ruled that the final two weeks of his near ten-month detention, between 1998 and 1999, were unlawful. The case involved political considerations in bilateral relations between two countries. Mr Youssef was convicted of a crime in the United Kingdom and was imprisoned, awaiting deportation, but before the UK government may deport someone, it must ensure that Article 3 of the Convention for the Protection of Human Rights is upheld. If a person would not be safe after deportation to his own country, the government must ensure that the detainee's article 3 rights are upheld- therefore he may be deported to a third country; that is, removed to a safe third country if assurances that Youssef would not face torture or other human rights violations can be assured by the Egyptian government before he is deported to Egypt. Such assurances need to satisfy a court both of their validity and comprehensiveness and since the security forces in Egypt, according to a 1996 NGO report, systematically practise torture it was expected of the UK government that they should make particular efforts to secure Mr Youssef's 'Article 3' human rights. Since this could not be assured, the Home Secretary of the UK was ready to release four men, including Mr Youssef, especially because the UK government had co-sponsored a successful EU resolution at the Commission of Human Rights regarding the right to reject an extradition request in the absence of legitimate assurances that capital punishment will not take place. Had the government sent Mr Youssef back to Egypt, the accusation of transgressing this resolution would be valid. The judge, Mr Justice Field, decided that the Home Secretary should have reached a timely decision. The government had left it to the court to make the decision on deportation to Egypt. Youssef had arrived in the UK in May 1994; had claimed asylum status and had been granted temporary admission. In September 1998, Youssef was detained, along with three other Egyptian nationals under the UK Prevention of Terrorism Act. A few days later he was released and then immediately re-arrested under powers contained in the UK Immigration Act- detained on the basis of national security 'pending a decision to give or refuse him leave to enter'. In December 1998, a Special Immigration Appeals Commission refused him bail. Advisors later informed the Home Secretary that there was no safe third country to which Youssef could be removed and that the possibility of returning him, and the three other detainees, to Egypt was explored. Youssef applied for habeas corpus but this was refused. The UK government was assured by the Egyptian government that the prisoners would not be tortured if they were deported back to Egypt but when the UK government asked for this to be placed in writing, the Egyptian government declined to do so, on the grounds that this would '*constitute an interference in the scope of the Egyptian judicial system and an infringement on Egyptian national sovereignty'*. By April 1999, Youssef had been tried and sentenced in absentia in an Egyptian Military Court to life imprisonment with hard labour. In

2004, Justice Field ruled that Youssef *'was unlawfully detained for the period 25 June 1999 to 9 July, a period of 14 days*'. These two previous cases help to show that Mr Justice Fields has a reputation of being a 'lawyer's lawyer'.

The Defendant, Dr Vincent Tabak

The accused, Vincent Tabak, aged 33 had denied the premeditated killing of Miss Yeates, whose body was found by dog walkers on a snowy verge on Christmas morning. The prosecuting counsel claimed that Dr Tabak, who lived in a ground-floor flat adjoining Miss Yeates's home in Clifton, Bristol, was alleged to have murdered the 25-year-old after she went for festive drinks with colleagues on Friday 15 December 2010, after work. Her partner had gone to Leicester for the weekend to visit his brother because Miss Yeates and Mr Reardon had planned to spend the Christmas holidays with Miss Yeates' parents. Vincent Tabak, 33, denies the premeditated killing of Miss Yeates, whose body was found on a snowy verge on Christmas morning.

Salient points in this trial

Neighbours at a party said that they had heard screams on the night of Yeates' death.
A priest is alleged to be the last person to see Joanna Yeates alive. A plate of chips at lunchtime was her last meal Dr Tabak, prosecuting counsel told the court, had accused the forensic science service of forgery and corruption. The prosecuting counsel further alleged that Tabak had searched the Internet for information about murder and manslaughter sentences. At some point that evening Vincent Tabak moved Joanna Yeates' dead body, put her in the boot of his car and drove it to Longwood Lane, claimed Mr Lickley, QC. A forensic examination of the scene where her body was found located Miss Yeates' blood on a wall of a neighbouring quarry - meaning Tabak may have tried to lift her corpse over the wall, claimed prosecuting counsel Nigel Lickley, QC and continued to tell his story of the case by saying that in the days after killing the blonde landscape architect, Tabak attended parties and dinners as he coolly maintained the pretence of a worried neighbour, the prosecution claims. Mr Lickley told jurors that witnesses would give evidence describing the defendant's demeanour after Jo disappeared and before he was arrested. He said:

> '*Some will describe their meetings and conversations with him over the following days. Some talk of his normality, some the pressures and strains he was displaying. He was seen by the police on a number of occasions and his behaviour is important. When alone at work or at home his Internet activity became ever more consumed, following news items as if almost following the police investigation as it unfolded.'*

Differences between Documentary and Real Evidence

In general, the construction of documents is a matter for the jury (see *R v Adams*, The Times, January 28, 1999) except documents which are binding agreements between parties and also all forms of legislation (see *R v Spens*,93 Cr. App. R. 194, CA).

Hearsay evidence

The effective definition of hearsay is in section 114(1) of the Criminal Justice Act 2003:
'A statement not made in oral evidence in the proceedings'. Therefore any statement in a document will be hearsay and inadmissible if the purpose for which it is sought to tender it in evidence is to rely on the truth of the statement, unless the document can be brought within one of paragraphs (a) to (d) of subsection 1 of section 114 Criminal Justice Act 2003. To determine whether a document is a public document or a private document depends of the manner in which the document can be proved, taking into consideration questions such as whether a copy will suffice, whether *parol* evidence of the contents may be given and how to prove the execution of a private document. Once the document has been proved or secondary evidence of its contents given, the court must then consider what use may be made of the contents and this is crucial in determining if a document is a hearsay document and if it is a hearsay document, it should not have been put in evidence.

Questions of hearsay usually arise in the context of private documents. Public documents can be regarded as constituting in themselves an exception to the hearsay rule: see *Sturla v Freccia* (1880) 5 App. Cass. 623, HL; *Irish Society v Bishop of Derry* (1846) 12 Cl. & F. 641; *Wilton & Co .v Phillips* (1903) 19 T.L.R. 390. The exception is expressly preserved by the Criminal Justice Act 2003, section 118, subsection 1.
It is in the case of private documents that the purpose for which the documents are being tendered has to be identified. Often, the documents are being put in evidence for a reason which has nothing to do with the hearsay rule. Correspondence with the defendant is an obvious example: see *R. v Rouse*[1957] Crim. L. R. 112, CCA. A letter written by the witness to the defendant may be exhibited by the witness.
Its significance is that it is what was said to the defendant. The letter may contain assertions of fact. Putting it in evidence does not make it evidence of the truth of those assertions. That is hearsay. If the matter is within the knowledge of the witness he may, of course, give direct evidence thereof. This assumes that the document in question can be properly proved and that there is no other reason for its exclusion. Examples would be that the letter contained assertions of fact prejudicial to the accused which could not be supported by other admissible evidence or that it contained prejudicial and irrelevant material, such as the author's knowledge of the accused's previous convictions. In either case, editing might solve the problem. *These are matters for the discretion of the judge: they have nothing to do with the principle of hearsay.*
In order to put a document in evidence as 'real evidence' *a sufficient foundation* must be laid to link the defendant to the document. It is only relevant if he were the author of the document or was in possession of the printed contents of the webpage or was in some way connecteds to the website document viewed by millions of people. *There must be prima facie evidence that he was in some other way connected with it.* See cases of *Howey v Bradley* [1970] Crim.L.R. 223, DC; *R v Horne* [1992] Crim.L.R. 304 and *R v Podmore*, 22 Cr. App. R. 36, CCA. Where the prosecution are in possession of a potentially incriminating document, the provenance of which they can prove but the contents of which they cannot prove against the defendant as part of their case, the document can still be used.
The appropriate procedure is for the finding of the document to be proved as part of the prosecution case with no reference to the contents (so as to give notice to the defence of the use which might eventually be made of the document).
However, website pages cannot be proved unless the prosecution can also within the case bring witnesses who wrote the pages in order to prove their reliability. There are millions of rubbish pages on the internet.
If the defendant gives evidence, he may be asked if he was aware of the document and of its contents; if he answers in the affirmative, he may be asked about the meaning thereof as in *R v Gillespie and Simpson*, 51 Cr.App.R. 172, CA; *R v Cooper* (W.J.),82 Cr.App.R. 74, CA (letter signed in the name of the defendant and his wife, but in the handwriting of his wife only); *R. v Cross*, 91 Cr.App.R. 115, CA (note of a telephone call between the defendant and another, made by the other).
As Dr Tabak is not a lawyer he cannot give legal scholarly explanations as to the nuances of the words contained in the law.

Absence of an entry in a particular record

Where it is the absence of an entry in a particular record that is relied on, the record itself may be regarded as 'real evidence' To have any evidential value, however, it will have to be properly produced by a person responsible for maintaining it who can explain the significance of the entries and omissions: see *R v Patel*, 73 Cr.App.R. 117, CA (for the purpose of proving that a named man is an illegal immigrant it is insufficient for an immigration officer to state that he has examined the Home Office records; it is necessary for an officer responsible for the compilation and custody of the records to testify as to the method of compilation and as to it being such that if the man's name is not there, he is an illegal immigrant). See also *R v Shone*, 76 Cr.App.R. 72, CA.

Computers

Information obtained from a computer, whether printed out or read from a display, may be divided into three categories. The first is where the computer has been used simply as a calculator to process information. (See *R v Wood (S.W.)*, 76 Cr.App.R. 23, CA, and another case, *Sophocleous v Ringer* [1988] R. T.R. 52, DC.) The second category is information which the computer has been programmed to record. (See *R v Pettigrew*, 71 Cr.App.R. 39, CA (recording of serial numbers of bank notes); *R. v. Spiby*,91 Cr.App.R. 186, CA (recording of details of outgoing telephone calls from hotel rooms); and
R v Coventry Magistrates' Court [2004] Crim.L.R. 948, DC (computer printout with breakdown of defendant's attempts to enter a website and of charges to be made to his credit card). Apart from the programming,

installation and maintenance of the computer, there is no human input in the information produced. The third category is information recorded and processed by the computer which has been entered by a person, whether directly or indirectly. It is only information from a computer in this third category which is hearsay: to be admissible, it must be brought within one of the exceptions to the rule against hearsay (as to which, see also the Criminal Justice Act 2003, s. 129. The computer output in the first two categories is sometimes referred to as 'real evidence'.

Abuse of Process

To use this law to prove the guilt of Vincent Tabak in such a very serious accusation- one of murder- may arguably constitute an abuse of process. However, a judicial review was not applied for on this point in the case of *R v Tabak*. This law is intended to be used for accounting and banking transactions and not murder.

Any evidence will go to weight unless unreliability is proved

Prior to the repeal of section 69 of the Police and Criminal Evidence Act 1984 by the Youth Justice and Criminal Evidence Act 1999, s. 60, it was necessary to prove the reliability of the computer before any statement in a document produced by a computer could be admitted in evidence. This applied whichever category the information fell within: see *R. v. Shephard* [1993] A.C. 380, HL. The repeal of section 69 means that any evidence pertaining to the reliability of a computer will go to weight. In the absence of any evidence to raise the issue of reliability it would seem that the maxim *omnia praesumuntur rite esse acta* will apply.

Computer print-out with no hearsay element
In a commentary on *Shephard* ([1993] Crim.L.R. 295 at296), another situation was identified where it is sought to put in evidence a computer print-out, and in which there is no hearsay element. This is where the print-out is the fact to be proved. Some might have argued that it was not relevant in the *Tabak* case.

Such a situation is exemplified by the House of Lords case of *R v Governor of Brixton Prison, ex parte Levin* [1997] A.C. 741, in which it was held that where a bank's computer transfers funds from one account to another (as a result of a payment request by a customer made via a computer linked to the bank's computer) and the computer records the transaction automatically, a print-out of the record is not a hearsay assertion that the transfer occurred; it is a record of the transfer itself; production of the record is evidence in proof of the transfer with no hearsay element involved. In *ex parte Levin*, it was assumed that section 69 of the 1984 Police and Criminal Evidence Act would have to be complied with. In such a case, the reliability and accuracy of the computer are obviously relevant. In other cases, however, they have no relevance at all. The significance of the computer generated document lies not in its accuracy, but in the defendant's behaviour in relation to it. BUT Dr Tabak merely looked at it, if his defence expert witness can confirm in the affirmative. The prosecution could have made it all up unless defence experts were allowed to examine it. It is much too late now and so this evidence should be excluded.

The relevance to police assertion that Tabak viewed certain online pages

Tabak, even if he did look at internet pages, did not print them. He did not use them.
He did not act on the information in them. He did not act in response to them. He did not annotate them. It is the defendant's *behaviour in relation to the print*-out that is important; as such, there is no hearsay element involved and no reliability issue. But as Tabak did not print out this information, this arguably is not relevant to his case.

Admission to manslaughter
Criminal Justice Act 1967, section 10 states that:

'1. Subject to the provisions of this section, any fact of which oral evidence may be given in any criminal proceedings may be admitted for the purpose of those proceedings by or on behalf of the prosecutor or defendant, and the admission by any party of any such fact under this section shall as against that party be conclusive evidence in those proceedings of the fact admitted.
2 An admission under this section (a) may be made before or at the proceedings; (b) if made otherwise than in court, shall be in writing; (c) if made in writing by an individual, shall purport to be signed by the person making it …; and (d) if made on behalf of a defendant who is an individual, shall be made by his counsel or solicitor.

Astonishingly, the most serious evidence in this murder trial came from Vincent Tabak's own mouth, when he admitted, not murder, but manslaughter. Vincent Tabak was charged with the murder of Joanna Yeates after the Bristol police received a long-distance telephone call from a prostitute in Los Angeles, informing them that Vincent Tabak paid for sex with the prostitute and asked her if he could pretend to strangle her during sex, to which she refused and left. She told the UK police that he then asked for a refund of his payment to her, but she refused and left his bedroom at the hotel at which he stayed for 4 weeks whilst working on a project for his firm's Los Angeles' office.

Admissibility of evidence

For an alleged confession, see the case of *R. v. Downer* (1880) 14 Cox 886, CCR, and *R. v. Turner* (B.J.), 61 Cr.App.R. 67, CA.

Magistrates' Courts Act 1980, ss.5A-5F states that: *'Evidence which is admissible (1) Evidence falling within subsection (2) below, and only that evidence, shall be admissible by a magistrates' court inquiring into an offence as examining justices.(2) Evidence falls within this subsection if it - (a) is tendered by or on behalf of the prosecutor, and(b) falls within subsection (3) below.(3) The following evidence falls within this subsection - (a) written statements complying with section 5B below;(b) the documents or other exhibits (if any) referred to in such statements; (c) depositions complying with section 5C below; (d) the documents or other exhibits (if any) referred to in such depositions; (e) statements complying with section 5D below; (f) documents falling within section 5E below. (4) In this section "document" means anything in which information of any description is recorded.'*

At the trial of Vincent Tabak for the murder of Joanna Yeates on 17 December 2010, written statements were submitted to the court by the upstairs neighbour of Vincent Tabak and Joanna Yeates. The witness statement from Mr Hardiman was read out to the court by junior defence counsel on 26 October 2011. English law states that: *'So much of any statement as is admitted in evidence by virtue of this section shall be read aloud at the hearing; and where the court so directs an account shall be given orally of so much of any statement as is not read aloud.'*

Prosecution's timeline of A3 bound booklet: Internet searches with untraceable metadata

Any document or other object referred to as an exhibit and identified in a statement admitted in evidence must be treated as if it had been produced as an exhibit and identified in court by the maker of the statement. During the trial, Mr Vincent Tabak never was asked outright whether he made any particular search as noted in this prosecution exhibit booklet. (See rule 27.1 of the Criminal Procedure Rules 2005 (S.I. 2005 No. 384) Some parts of this exhibit booklet which the prosecutor used throughout the trial contained partial metadata and some parts contained partial copies of webpages.

Statements

Whilst on remand awaiting trial, Vincent Tabak was imprisoned in a high category secure prison named Long Lartin Prison in Worcester. After one month there, Tabak decided to tell an unqualified, volunteer at the prison- acting as a chaplain- that he was responsible for the death of Joanna Yeates.
He did not make this confession to the police nor to his lawyers but to a man he had net only twice before this time. Not being a bone fide chaplain, this volunteer decided to divulge the contents of his conversation with Tabak- to the police. Vincent Tabak was handed a prosecution statement to sign, which he did, after making several amendments to it. He signed and dated that admission to manslaughter in September 2011. This statement was admissible since, before the committal proceedings began, the prosecutor notified the court and each of the other parties to the proceedings that he believed that the statement, by virtue of section 23 or 24of the Criminal Justice Act1988 (statements in certain documents) was admissible as evidence if the case came to trial, and that the statement would not be admissible as evidence otherwise than by virtue of section 23 or 24 of the Criminal Justice Act 1988. The prosecution used this statement to insist on a murder trial and not a manslaughter trial.

A judge directed a *voire dire* for the purpose of deciding whether purported experts should be allowed to give evidence as expert witnesses. Unlike the case of *R v* G [2004] 2 Cr.App.R. 38, CA, the experts were called to the witness box rather than their written statements alone relied on.

Common law admissibility

The following rules of law are preserved. published works dealing with matters of a public nature (such as histories, scientific works, dictionaries and maps) are *admissible as evidence of facts of a public nature stated in them,* Public documents (such as public registers, and returns made under public authority with respect to matters of public interest) are admissible as evidence of facts stated in them. This common law admissibility principle was used to admit the maps of local areas as per *Google* maps.

Evidence relating to a person's age or date or place of birth may be given by a person without personal knowledge of the matter. The rule is preserved only so far as it allows the court to treat such evidence as proving or disproving the matter concerned. A statement is admissible as evidence of any matter stated if the statement was made by a person so emotionally overpowered by an event that the possibility of concoction or distortion can be disregarded. Since such of Tabak's statements were accompanied an act which can be properly evaluated as evidence only if considered in conjunction with the statement (his confession) and Tabak's statement did refer to his physical sensation or a mental state (such as intention or emotion).

Expert evidence

Any rule of law under which in criminal proceedings an expert witness may draw on the body of expertise relevant to his field. With the exception of the rules preserved by this section, the common law rules governing the admissibility of hearsay evidence in criminal proceedings are abolished.
In the case of *Ratten v. R.*[1972] A.C. 378, Lord Wilberforce, delivering the opinion of the Privy Council said (at p. 389) that where a hearsay statement is made either by the victim of an attack or by a bystander, indicating directly or indirectly the identity of the attacker, the admissibility of the statement is said to be dependent on whether it was made as part of the *res gestae* (all facts so connected with a fact in issue as to introduce it, explain its nature, or form in connection with it one continuous transaction). His Lordship said that there were two objections to such evidence. The first was that there may be uncertainty as to the exact words used because of their transmission through the evidence of another person than the speaker. The person testifying to the words used is liable to cross-examination; the accused, if he was present, can give his own account, if different. There is no such difference in kind or substance between evidence of what was said and evidence of what was done (for example between evidence of what the victim said as to an attack and evidence that he was seen in a terrified state or was heard to shriek) as to require a total rejection of one and admission of the other. Can the witnesses who heard screams identify that they were from the voice of Miss Yeates? Had they ever heard Miss Yeates speak? Can they distinguish between a cats shriek- very much as real as a person's scream- and the scream of a woman, as they claimed? Besides which, from the CCTV evidence shown in court, of the couple at the party previously going into the same "bargain booze" shop before they went to the party at number 53, it is to be noted that the woman had her ears covered with her hair and a woollen hat. Can she really have heard a scream with a woollen hat over her ears?

Therefore prosecution witnesses were possibly mistaken; especially since the owner of an upstairs flat to Joanna Yeates' signed a statement to say that he heard nothing untoward during all of that weekend. This means that there is a denial of the truth of the accounts given by the prosecution witnesses, whether it is said that they are mistaken as a result of a vivid imagination or otherwise. Note that during a trial for murder by poisoning, statements by the deceased, shortly before he took poison, were admissible to prove the state of his health at that time. See the case of *R. v. Johnson* (1847) 2 C. & K. 354).

Criminal Justice Act 2003, s.98- 'Bad character'

Vincent Tabak has an impeccable history. He had never been convicted of any criminal offence anywhere and was a highly regarded professional person. He therefore has no bad character issues.
Evidence of a person's 'bad character' is evidence of, or of a disposition towards, misconduct on his part, other than evidence which relates to the alleged facts of the murder with which the Tabak was charged, or evidence of misconduct in connection with the investigation or prosecution of the murder of Joanna Yeates.

Evidence relating to alleged facts of the murder charge

Evidence relating to the alleged facts of Joanna Yeates' murder with which Tabak was charged could have been argued over. It is an important issue. The murder charge should not have been proved without establishing the bad character of the defendant. Evidence of misconduct on the part of a person other than the defendant may not be essential to proof of the defendant's guilt, but it may be directly relevant to it. Tabak had no 'bad character' as per Criminal Justice Act 2003, s.112. The words 'bad character' concern the term as it is placed in section 98. The words 'criminal proceedings' means criminal proceedings in relation to which the strict rules of evidence apply.

Murder or manslaughter

The principal matters in issue in criminal proceedings are whether the defendant did the act or made the omission charged against him, and, if he did, whether he did so with the relevant state of mind (intentionally, recklessly, knowingly, wilfully, dishonestly, with fraudulent intent, etc.), or whether he did so by mistake, by accident, through inadvertence or even in a state of automatism. If he did do the act or make the omission charged against him, and did so with the relevant state of mind, this will not necessarily be the end of the case, for the law may provide for excuses in the form of defences such as self-defence, duress or necessity, or, in a case of murder, provocation or diminished responsibility, and a host of other statutory provisions allowing for particular defences to particular offences. Not all of these issues will be live issues in any given case. Commonly, there will only be one live issue. Was it the defendant who did it? Was he acting dishonestly? Was he acting in self-defence? Where the issue is as to whether the defendant was responsible, a related issue will be as to who did do it (assuming there is no doubt that the crime was committed) if it was not the defendant. Where any of the foregoing issues are live issues in the particular case, it may safely be said that they are important issues. Resolution of any of them in favour of the defendant will be likely to be determinative of the outcome of the case. They are primary issues. There will be other issues in the case of a lesser order of importance in that their resolution one way or the other will not be determinative of the outcome of the case. Such issues may include matters such as whether or not the defendant has concocted his alibi, whether he lied during his interviews with the police, whether he mentioned a fact which he has relied on at trial, whether he lied during the course of his evidence, whether he opted to say nothing in police interview because he had been advised to do so by his solicitor or because he had not thought up a defence at the time or realised that any defence he might advance would be shown to be a pack of lies. Such issues may be called secondary issues.
The common law distinguished between matters going to the issue and matters going only to credit; and such distinction was also recognised in previous statute law. Thus both sections 4 and 5 of the Criminal Procedure Act 1865 (ante, §§8-124a, 8-127) make provision for cross-examination on prior inconsistent statements 'relative to the subject matter of the indictment" and for their proof if the making of such statement is denied. All of the matters mentioned above would be matters "relative to the subject matter of the indictment'.
The language of section 100 does not recognise any distinction between matters going to the issue and matters going to credit only. The language, taken on its own, strongly suggests that it is only concerned with the admissibility of bad character evidence where such evidence is relevant to a matter in issue that is a matter relative to the subject matter of the indictment, i.e. that it is not concerned at all with evidence that is relevant only to credit. At common law, evidence that went only to credibility was never spoken of as having 'probative value'. Evidence only had 'probative value' if it went to proving or disproving one of the primary or secondary issues in the case. Such a view of the legislation is borne out by subsection (3), the language of which is redolent of the common law rules relating to the admissibility of similar fact evidence. None of it is suggestive of evidence that goes only to the credibility of the witness.

Criminal Justice Act 2003, ss.101, 108

Section 101 states that the Defendant's bad character in criminal proceedings evidence of the defendant's bad character is admissible if, but only if - all parties to the proceedings agree to the evidence being admissible, the evidence is adduced by the defendant himself or is given in answer to a question asked by him in cross-examination and intended to elicit it; if it is important explanatory evidence; if it is relevant to an important matter in issue between the defendant and the prosecution;
if it has substantial probative value in relation to an important matter in issue between the defendant and a co-defendant; if it is evidence to correct a false impression given by the defendant, or if the Defendant has made an attack on another person's character.

Section 108 refer to offences committed by the Defendant when a child.

In *R v Dolan* [2003] Crim.L.R. 41, CA, where the appellant had been charged with the murder of his baby by forceful shaking, and it was clear that the killing was the responsibility of one or both parents, it was held that evidence of various episodes, spoken to by the baby's mother and a former girlfriend of the appellant, in which he had lost his temper and displayed significant violence towards inanimate objects when they did not work had not been admissible under the *Pettman* principle; the fact that a man who was not shown to have any tendency to lose his temper and react violently towards human beings became frustrated and violent towards inanimate objects was irrelevant and inadmissible.

In *R v Diana Butler* [2000] Crim.L.R. 835, CA, the court said that in the event of an issue arising as to the admissibility of evidence under this principle, counsel should endeavour to agree an account of the background so as not to distract the jury's attention from the central events. Failing agreement of which the judge approves, there should be a fuller analysis of the situation in the absence of the jury. This advice would appear to be equally apposite to admissibility under the 2003 Act as it was to the resolution of such issues at common law.

Evidence that would have been admissible at common law would be evidence of sufficient probative force. The leading case was the decision of the House of Lords in *DPP v P* [1991] 2 A.C. 447. The sole speech was delivered by Lord Mackay. His Lordship concluded (at p. 460) that the essential feature of evidence to be admitted under the ‘similar fact’ rule was that its probative force in support of the allegation being tried was sufficiently great to make it just to admit the evidence, notwithstanding that it was prejudicial to the accused in tending to show that he was guilty of another crime. Such probative force could be derived from striking similarities in the evidence about the manner in which the crime was committed, but restricting the circumstances in which there was sufficient probative force to overcome the prejudice of evidence relating to another crime to cases where there was some striking similarity between them was to restrict the operation of the principle in a way that gave too much effect to a particular manner of stating it, and was not justified in principle. The case *DPP v P* rid the law of the notion that had developed in the years since the decision of the House of Lords in
DPP v Boardman [1975] A.C. 421, that the test of admissibility was that there should be a ‘striking similarity’ between the similar fact evidence and the evidence relating to the charge being tried. What was now clear was that the degree of similarity required would vary according to the issues in the case and the nature of the other evidence.

Identification of motor cars

A direction analogous to a Turnbull direction is not required in relation to the identification of motor cars. However, a trial judge should draw the jury's attention to: (a) the opportunity that each witness had to identify the car; (b) each witness's apparent ability to distinguish between makes of car; (c) how far each witness can be relied on as to what he remembered: *R v Browning*,94 Cr.App.R. 109, CA. Nor is a Turnbull direction required for number plates; it is sufficient to remind the jury of the circumstances in which the observation was made, and of any factors which might render the testimony less reliable than would otherwise be the case, together with any other special warning which the trial judge may consider is merited by the particular facts of the case: *R v Hampton and Brown*, The Times, October 13, 2004, CA.

DNA evidence

A DNA profile is not unique; it expresses probabilities. It is a fallacy to confuse the match probability with what is known as the likelihood ratio. There are two distinct questions: (a) what is the probability that an individual would match the DNA profile from the crime sample given that he is innocent? (b) What is the probability that an individual is innocent, if he matches the DNA profile from the crime sample? The ‘prosecutor's fallacy’ consisted of giving the answer to the first question as the answer to the second*: R v Deen*, The Times, January 10, 1994, CA; R *v Gordon* [1995] 1 Cr.App.R. 290, CA.
In the absence of special features, expert evidence should not be admitted to induce juries to attach mathematical values to probabilities arising from non-scientific evidence (i.e. Bayes Theorem) to support or counter DNA evidence or other evidence: R. v. Adams (No. 2)[1998] 1 Cr.App.R. 377, CA.
The cogency of DNA evidence makes it particularly important that DNA testing is rigorously conducted to obviate the risk of laboratory error; the method of DNA analysis and the basis of subsequent statistical calculation should, as far as possible, be transparent to the defence; and the true import of the resultant conclusion is accurately and fairly explained to the jury. To achieve these ends, the following procedural guidelines were laid down in *R v Doheny and Adams* [1997] 1 Cr.App.R. 369, CA.

First, the scientist should adduce the evidence of DNA comparisons together with calculations of the random occurrence ratio. Secondly, the Crown should serve on the defence sufficient details of how the calculations were carried out so as to allow the basis of those calculations to be scrutinised. Thirdly, on request the forensic science service should make available to a defence expert the databases upon which the calculations were based. When the scientist testifies, it is important that he should not overstep the line, which separates his province from that of the jury. He should explain the nature of the match between the DNA in the crime stain and the defendant's DNA. He should, on the basis of empirical statistical data, give the jury the random occurrence ratio, the frequency with which the matching DNA characteristics were likely to be found in the population at large. If the necessary data are available, it might be appropriate to state how many people with those matching characteristics were likely to be found within the United Kingdom, or perhaps within a more limited sub-group. That would often be the limit of the evidence, which could properly be adduced. A scientist should not be asked his opinion on the likelihood that it was the defendant who left the crime stain, nor when giving evidence should he use terminology which might lead a jury to believe that he was expressing an opinion.
In summing up, the judge should explain the relevance of the random occurrence ratio; and he should draw attention to the extraneous circumstances, which gave that ratio its significance; and to any extraneous evidence that conflicted with the suggestion that the defendant was responsible for the crime stain. For recent confirmation of these principles, see *Pringle v R*, unreported, January 27, 2003, PC [2003] UKPC 17.
DNA evidence taken from a crime scene that does not match the accused is powerful evidence, which the jury should be invited to consider carefully and weigh in the scales against the prosecution evidence of identification. To raise against a defendant theoretical or speculative possibilities that the sample had been contaminated and to use such speculation to neutralise the significance of the non-matching profile was wrong. Judges should consider with great care the way in which they present scientific evidence to the jury: *R v Mitchell*, The Times, July 8, 2004, CA.

Police and the media

In *R v Bristol Crown Court, ex p. Bristol Press and Picture Agency Ltd*, 85 Cr. App .R. 190, DC, it was held that a judge, exercising his powers under Schedule 1 to order production of material for the purposes of a criminal investigation, was entitled to draw the inference that press photographs of riots were likely to be of newsworthy incidents which might be of value in a criminal investigation. The judge had said:

> *'There is a very great public interest that those guilty of crime, and particularly of serious crime involving widespread public disorder, should be brought to justice. Equally, there is a great public interest that those who are innocent but who may be suspected of crime should be cleared and, if possible, eliminated from the criminal process. Photographs that are likely to advance either of these objects are of benefit to the investigation.'*

The judge had concluded in favour of granting the application and it was a matter for his discretion. He had applied the right test, made no error of law, and had taken account of relevant matters only.

Conclusion

Tabak was found guilty of the murder of Joanna Yeates. His confession was the most important evidence against him. He was given a term of life sentence, of which no less than twenty years were to be served, making his aged 53 were he to be released after the 20 years. Vincent Tabak's immigration status as an EU citizen who had been working in full-time employment in Bah for three years prior to his imprisonment means hat he may be repatriated to serve out his prison sentence in Holland. Vincent Tabak had not, prior to his most serious criminal act of the murder of Joanna Yeates in Bristol in December 2010, was not in breach of any immigration laws and so cannot be deported on this basis. He had absolutely no criminal history, either in the United Kingdom or abroad. (In the case of *R v Khandari*, unreported, April 24, 1979, Lord Justice Bridge stated that the question of whether to recommend deportation should be decided independently of the status of the particular offender before the court in relation to his position under the Immigration Act. The relevant considerations were his history, particularly his criminal history, and the gravity of the offence. See *Miller v Lenton*, 3 Cr.App.R.(S.) 171, DC; and also he case of *R v Nunu*,12 Cr.App.R.(S.) 752, CA.

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