Case No: 44SC1066125

IN THE CROWN COURT AT SOUTHAMPTON

Southampton Combined Court Centre
The Courts of Justice
London Road
Southampton, Hampshire
SO15 2XQ

BEFORE:

HIS HONOUR JUDGE WILLIAM MOUSLEY KC
THE HONORARY RECORDER OF SOUTHAMPTON

BETWEEN:

R — **PROSECUTION**

- and -

VICKRUM DIGWA — **DEFENDANTS**
KIRAN KAUR

Legal Representation

Mr Nicholas Lobbenberg King's Counsel (Barrister) on behalf of the Prosecution
Mr Neil Anthony King (Barrister) on behalf of the Prosecution
Mr Jeremy Patrick Wainwright King's Counsel (Barrister) on behalf of the Defendant (Digwa)
Mr Benjamin Hargreaves (Barrister) on behalf of the Defendant (Digwa)
Mr Mark Watson King's Counsel (Barrister) on behalf of the Defendant (Kaur)

Other Parties Present and their status

Mr *Sagib Ajile* (Punjabi Interpreter)

Witness Evidence of [Witness 5] (Full evidence)

Hearing date: 15 May 2026
Transcribed from 10:52:08 until 11:55:24

Reporting Restrictions Applied: No

Number of folios in transcript 120
Number of words in transcript 8,603

Dr [Witness 5]: I do solemnly, sincerely, and truly declare and affirm that the evidence I shall give shall be the truth, the whole truth, and nothing but the truth.

(pause)

Mr Lobbenberg: Can you please give the Court your full name?

[Witness 5]: I'm Dr [Witness 5].

Mr Lobbenberg: And what's your job?

[Witness 5]: I'm a Home Office registered forensic pathologist.

Mr Lobbenberg: And what does that mean?

[Witness 5]: So as a forensic pathologist, I'm involved in the examination of people after they've died to determine the cause of death but also to document any natural diseases and anything really that tells the story about what's happened to them in the lead up to the, their death. As a forensic pathologist, my role is looking into deaths whereby the actions or inactions of another person or organisation may have played a role in the death.

Mr Lobbenberg: And just quickly, your professional qualifications?

[Witness 5]: So as a forensic pathologist, I'm a fully qualified medical doctor with a degree of Bachelor of Medicine and Bachelor of Surgery, and I'm a fellow of the Royal College of Pathologists by examination in the field of forensic pathology.

Mr Lobbenberg: Thank you. Now, you've prepared a report in this case which I suspect you would like to refer to.

[Witness 5]: Yes, please.

Mr Lobbenberg: In front of you we have a file. If you, we've got, it should be coming up on screen in front of you as well, but if you turn to tab 3 of the file, that should give you the same imagery as is on screen.

[Witness 5]: Yes.

(pause)

Mr Lobbenberg: Now, in order to do your job, your receive a history from the police, don't you, as to what they know and what has happened?

[Witness 5]: Yes.

Mr Lobbenberg: I don't need to rehearse that with you, but you get that information and in this particular case you also looked at the body worn footage of the Officers that had been on scene.

[Witness 5]: Yes.

Mr Lobbenberg: And your job, at the post mortem, was to determine effectively eight features, wasn't it? If we go to your report page 5, pick it up from there. The cause of death, whether it can be *term*, determined if injuries are non accidental, the number of injuries, wounds, the mechanism of each injury, the toxicology, would any of the wounds have been survivable had there been early medical intervention, and if it could be determined if the application of the handcuffs hindered survival chances, and can the time period from cause of death to death be determined.

[Witness 5]: Yes, these were questions that had been raised by the instructing police force.

Mr Lobbenberg: So you didn't attend at the scene --

[Witness 5]: No.

Mr Lobbenberg: You did look at the video and you also have the records of the ambulance who attend, which had attended.

[Witness 5]: Yes.

A

Mr Lobbenberg: You carried out a post mortem --

[Witness 5]: Yes.

B

Mr Lobbenberg: And Henry Nowak was 18 years of age, having been born on 23 February 2007.

C **[Witness 5]:** Yes.

Mr Lobbenberg: And the body was that in keeping with a man of his age.

D **[Witness 5]:** Yes.

Mr Lobbenberg: But can I ask you this about the clothing? When you received the clothing there was one trainer on the right foot.

E

[Witness 5]: That's correct.

Mr Lobbenberg: The left trainer didn't accompany the body.

F **[Witness 5]:** That's right.

Mr Lobbenberg: There were black socks.

G **[Witness 5]:** Yes.

Mr Lobbenberg: There were some black Calvin Klein boxer shorts.

[Witness 5]: Yes.

H

Mr Lobbenberg: And there are areas of damage on those boxer shorts that correlated with wounds to the buttock and thigh area.

A **[Witness 5]:** Yes.

Mr Lobbenberg: There was a tiny hole in the front pouch which correlated with a puncture injury into the pubic region.

B **[Witness 5]:** Yes.

Mr Lobbenberg: You noticed there were some marks of medical intervention.

C **[Witness 5]:** Yes.

Mr Lobbenberg: We don't need to go through those for our purposes.

D **[Witness 5]:** No --

Mr Lobbenberg: But --

E **[Witness 5]:** They were --

Mr Lobbenberg: You, you identified them and so when we look at our, our body map, they, they don't feature, do they, they --

F **[Witness 5]:** That's right.

Mr Lobbenberg: They, they've been taken off our drawing.

G **[Witness 5]:** Yes.

Mr Lobbenberg: So you don't see the medical intervention injuries on the drawings that you're looking at. Then there were some old marks, skin tags scattered like acne form on the shoulders and upper backs, minor scars to the knees, and yellowing bruising to the shins, and the outer aspect of the left lower shin.

H **[Witness 5]:** Yes.

Mr Lobbenberg: And then I'd now like us to go through what you found, and I'm at the bottom of page 9 of the report, and can we start by looking at the imagery please? And it, I, I know that this may be in a slightly different order, the imagery is in a different order to *the way* the report's written, so we'll *drive it* off the injury. If you can juggle your --

[Witness 5]: Sure.

Mr Lobbenberg: Report --

[Witness 5]: Of course, yes.

Mr Lobbenberg: I'll see if I can help you. So firstly, can we have page 2 up? And this is our page 2 of our physical bundle and here we see, what do we see?

[Witness 5]: So this is the principle wound, so the wound that has ultimately led to his death, and this is a stab wound on the left side of the front of the chest. It looked horizontally orientated, so a slit like in a horizontal plane. It measured 2.4cm in length at the skin surface.

Mr Lobbenberg: So because it's horizontally orientated, does that tell us something about the direction of what must have caused it, how the knife must have been orientated?

[Witness 5]: Yes, so if we think of a blade, for example, as a completely separate example, a kitchen knife. If it is pushed into somebody as you might hold it when cutting vegetables at home it will produce a vertical wound, whereas if it is tilted onto its side it will produce a horizontal wound, and obviously there are many angles in between where it will produce a diagonal injury.

Mr Lobbenberg: Right. But this wound was horizontal.

[Witness 5]: It was.

Mr Lobbenberg: So the blade was that way?

[Witness 5]: Yes.

(music)

His Honour Judge Mousley: Just pause a moment.

(music continues)

His Honour Judge Mousley: All phones off, please.

(pause)

Mr Lobbenberg: So --

His Honour Judge Mousley: Thank you.

Mr Lobbenberg: What was the nature of the cut?

[Witness 5]: So this was a, a sharp stab wound. As it passed into the body there were some features of the edges of the wound that indicated that it was going upwards into the body and that was undercutting of the upper margin and shelving of the lower margin, a bit like a beach would shelve, the soft tissue shelved at the lower margin, so this was a wound that passed into the body in an upwards direction.

Mr Lobbenberg: Right, so does that tell us something about the way the blade was entering the direction it was going?

[Witness 5]: Yes.

Mr Lobbenberg: So we've got a, we know it's horizontal --

[Witness 5]: Yes.

Mr Lobbenberg: But it's going upwards.

[Witness 5]: Yes.

Mr Lobbenberg: So the blade is going into the body horizontal and upwards. We've just --

[Witness 5]: Yeah.

Mr Lobbenberg: Lost all media.

His Honour Judge Mousley: It's all right, there we go.

[Witness 5]: It's back.

Mr Lobbenberg: Oh, we're back. OK.

(pause)

Mr Lobbenberg: Now, if we turn over the page, go to the next slide, do we see the, effectively what we would call the wound track?

[Witness 5]: Yes.

Mr Lobbenberg: Now, the wound track is how the knife penetrates the body where it goes, isn't it?

[Witness 5]: Exactly that.

Mr Lobbenberg: And so here we have three images and it, it's rather like, it is a cut away, isn't it?

[Witness 5]: Yeah, it's showing --

Mr Lobbenberg: Through --

[Witness 5]: A sort of --

Mr Lobbenberg: Slices of the human anatomy.

A **[Witness 5]:** Yes, it's showing sort of deeper windows into the body so that you can see the structures that are underlying that area of skin.

Mr Lobbenberg: All right. So entry point is first. Can we go through this please?

B **[Witness 5]:** Yes, so you can see the skin wound on the far left diagram, and then in the next diagram across it's showing what you can see once the soft tissues of the chest wall have been taken away, so here you can see the rib that is highlighted as the white area, the second rib that you can see, and you've got that little dotted line that shows exactly where the wound is
C within the tissue, so you can see in that diagram that the wound passes below a rib, essentially between two ribs, and there's a piece of muscle that sits between the ribs, and it's passed through that muscle.

D **Mr Lobbenberg:** And once again, did that show upwards shelving?

[Witness 5]: Yes, it did.

E **Mr Lobbenberg:** So the blow is continuing upwards, in the upwards trajectory as, same as it came in.

[Witness 5]: Exactly, yes.

F **Mr Lobbenberg:** So it's on the horizontal, the knife is on the horizontal going upwards.

[Witness 5]: Yes.

G **Mr Lobbenberg:** And at each stage you measure the, the wound within these particular areas, don't you?

[Witness 5]: Yes.

H **Mr Lobbenberg:** And what was the wound to the inter, intercostal muscle?

[Witness 5]: That was 3cm in length.

Mr Lobbenberg: And the wound then goes past the second rib.

A

[Witness 5]: Yes, it, it goes up behind the back of that second rib that you can see as a white highlight on your diagram.

B

Mr Lobbenberg: And that would be, what, another 2.2cm?

[Witness 5]: So, no, the, where I refer to 2.2cm in my, in my report, the lining of the chest wall is quite firm and it gives a really good representation of the size, and so I took another measurement of the lining of the chest where the wound had entered into the chest cavity --

C

Mr Lobbenberg: Thank you.

D

[Witness 5]: And at that point, it measured 2.2cm. It's quite a firm structure, lots of things like muscle collapse down and don't necessarily give you an accurate measurement, whereas the pleura, the lining of the chest cavity is, gives a quite accurate measurement.

E

Mr Lobbenberg: Thank you, and then where does the wound go, the wound track go?

[Witness 5]: So it produced a cut in the inner edge of the upper lobe of the left lung.

F

Mr Lobbenberg: So we're now on the far right image, aren't we?

[Witness 5]: Yes, so you can see that sort of pinkish structure that is labelled:

"left lung, upper lobe"

G

and it has nicked the edge and essentially in the sort of area where that little white line attaching the box with the, the description in is pointing to the lung, so it's nicked the edge of the lung.

(pause)

H

Mr Lobbenberg: And did you notice some other features?

[Witness 5]: So there was quite a lot of bruising or bleeding that was present in what we call the thoracic outlet which is just a, a fancy term for the area really at the very top of the chest cavity, and it was in this area that I identified the main vascular injury, so if you look at your diagram, you can see a big Y shaped area of blue on that last diagram on the right, and that is the venous system coming out of the heart, or I should say going into the heart, it's drawing blood back from the body into the heart.

Mr Lobbenberg: So it's a big vein.

[Witness 5]: Exactly that, and the subclavian vein is the one that curves off to the right of that Y that you're looking at and you can see there's a, an annotation on your diagram. It sits directly under the collar bone in that area, so really quite high up in the chest, and there was a defect in this vessel, so it had been nicked by the knife and opened --

Mr Lobbenberg: Right.

[Witness 5]: Allowing blood to spill into the chest cavity.

Mr Lobbenberg: Right, and you measured what was in the chest cavity, didn't you?

[Witness 5]: Yes, so there was over a litre, so 1,200ml of liquid blood and clotted blood within the left chest cavity, so a really significant bleed.

Mr Lobbenberg: And the total depth of the wound, what was your estimation of that?

[Witness 5]: So the estimated depth from the skin surface to that deepest point where it nicked the blood vessel was estimated to be at about 8cm.

Mr Lobbenberg: And so that is the wound track within the body, so the, the blade would obviously have had to go also through any clothing that *would* been worn before it reached the body?

[Witness 5]: Yes.

(pause)

Mr Lobbenberg: So, can we go over the page please and look at the next wounds?

A

(pause)

Mr Lobbenberg: And so now we're looking at the reverse of, the back of the body, aren't we?

B

[Witness 5]: Yes.

Mr Lobbenberg: And can you tell us about what you found there?

C

[Witness 5]: So on you diagram marked SW3 was a stab wound to the back of the right upper thigh.

Mr Lobbenberg: That's the, looking at our diagram, that's the lower one, isn't it?

D

[Witness 5]: Yes, the one that's at a slightly diagonal orientation.

Mr Lobbenberg: What can you tell us about that?

E

[Witness 5]: So that measured 1.8cm at the skin surface. Similar to the wound on the chest, there was again shelving of the edges, and again it was shelved upwards so the wound's gone into the body in an upwards fashion.

F

Mr Lobbenberg: So again, doing the same exercise, in order to cause that wound --

[Witness 5]: Yes.

G

Mr Lobbenberg: The knife would have been orientated at a sort of, a, a sort of angle, I think you've described it as 2 to 8 o'clock, is that --

[Witness 5]: Yes.

H

Mr Lobbenberg: 2 to 8 o'clock, if you imagine a clock face, and it's going upwards?

[Witness 5]: Yes.

A

(pause)

Mr Lobbenberg: What else was there?

B

[Witness 5]: So in addition to passing upwards, it's also passed sort of from the back of his body towards the front and towards the inner aspect of the thigh.

Mr Lobbenberg: So can you explain what that means?

C

[Witness 5]: So we imagine, if we imagine a straight line down the centre of the body, parting right down through your nose and your belly button, on him, if he was stood in front of us and we're looking at the back of his body, the wound has gone into the body, upwards, and towards the midline or the centre of his lower back, *but* essentially towards the inner aspect of the leg, if that makes sense. It hasn't just gone straight from back to front, it's angled in towards the inner aspect of his leg as well.

D

Mr Lobbenberg: All right.

E

(pause)

Mr Lobbenberg: Do you have an estimated depth of this wound?

F

[Witness 5]: Yes, so this was about 3.5cm in depth.

(pause)

G

Mr Lobbenberg: Is there anything else about SW3?

[Witness 5]: There was some slight irregularity of the wound margins so they weren't perfectly neat. That can be as a result of a feature on the blade that has caused an injury, but it can also simply be the result of movement during infliction and that is either movement of the knife within the wound, or movement of the victim in response to the knife passing in and it can sometimes cause the edges to be a little bit irregular or notched.

H

Mr Lobbenberg: Thank you. So now can we deal with SW4, the higher injury?

[Witness 5]: So this was another stab wound, sort of fitting at the inner aspect at the natural sort of crease below the buttock. It measured 2.5cm in length. It's not quite that visible on your diagram, but again, it was slightly off the horizontal so again slightly diagonal although I appreciate it looks rather straight on your diagram. Again, there was a little irregularity of the edges, so there was some notching that might suggest, as we've already said, movement or a feature of the blade. It passed into the buttock, very slightly upwards, and again in towards the midline centre of the body, so in towards the buttock crease rather than straight forward into the body.

Mr Lobbenberg: And how deep was it?

[Witness 5]: This was approximately 5cm in depth.

(pause)

Mr Lobbenberg: Now, can we go, *I*, over the page?

(pause)

Mr Lobbenberg: What do we see here?

[Witness 5]: So this was a small puncture mark, likely a knife tip mark, within the pubic hair just to the right of the midline, again the centre line of the body. It was really small, so it's about a millimetre. It's really tiny.

Mr Lobbenberg: But there, when you'd looked at the underwear, was there an associated damage?

[Witness 5]: Yes, there was.

Mr Lobbenberg: And likewise to the previous injuries, on the previous page, the injuries to the buttocks and the thigh, was there damage on the underwear?

[Witness 5]: Yes, there were.

A

(pause)

Mr Lobbenberg: Now …

B

(pause)

Mr Lobbenberg: The way you work is you go basically top to toe, don't you?

C

[Witness 5]: Yes.

Mr Lobbenberg: And go down the limbs as well?

D

[Witness 5]: Yes.

Mr Lobbenberg: So you found various other things and I, what I'd like us to do now, because we've also got another injury to look at but we pick that up *along*, along the way, is, is to carry out that exercise using our drawings.

E

[Witness 5]: Sure.

F

Mr Lobbenberg: All right? And once we've identified all those, all those injuries, I'm then going to, I'm afraid, ask you to go through what that tells us.

[Witness 5]: Sure.

G

Mr Lobbenberg: So can we now start, we're on our next image, we've got the, the image here of the top of the head, and what do we see here?

[Witness 5]: So this is a tiny punctate, is the term I use, or dot like skin defect within the hair bearing scalp towards the top of the head, so it's tiny, it's less than a millimetre.

H

Mr Lobbenberg: Thank you. Can we go over the page, please? That's, here we have the head.

[Witness 5]: And at number two, we can see an area of stippled or speckled reddening at the temple, 1.6cm by 1.6cm. Then at number three in the black box there was some blotchy purple bruising to the apple of the right cheek, and an area just posterior to that of some slight speckling again similar to the one that we just looked at at the temple, together measuring 5.5cm by 2cm, and then you have the red box by the chin or jawline. This is a short S shaped incised wound or cut on the right jawline measuring 1.6cm in length.

Mr Lobbenberg: Now that cut, do you have a view about that cut?

[Witness 5]: So it has been caused by a sharp object. That could be a knife, that could be another sharp object, but it's something that is very sharp. This isn't a scratch from a bush or something that he's come up against. It's a very neat cut.

(pause)

Mr Lobbenberg: Can *we* go over the page, please?

(pause)

[Witness 5]: So again, you can see that cut on the face in a slightly different angle, but then at number four is a punctate or again tiny dot like mark just below the lip. Number five, again, is a very similar small punctate defect in the skin just below the right jawline, and then number six is a further small punctate mark on the right side of the neck, and then if we look in the little insert box on the right side of that image you'll see a number seven, and this was just a pink mark on the left side of the neck measuring about 0.7 by 0.2cm, so less than a centimetre.

Mr Lobbenberg: Can we now start to look at the injuries you found on the limbs, please, starting with the right?

[Witness 5]: So your diagram will be showing you the right hand and wrist, and if we start with number eight towards the top of the diagram, there was pink bruising to the back of the hand, close to the wrist, and it produces a slightly Z shaped pattern which I think the imaging people found rather difficult to show, but you can see there's some slightly linear straight components within that bruise and it produced a, a sort of Z shaped scratch within it.

A Overall, that area measured two, sorry, 4cm by 2cm, and you can see that, the two arrows show it just shown in slightly different angle on the diagram, and then number nine, we're looking at the little finger side of the hand in that diagram, and there were some faint purple bruising at that border of the hand, little finger side, 1cm by 1.5cm.

B (pause)

Mr Lobbenberg: And if we go over to look at the other hand?

C (pause)

[Witness 5]: So if we start with the upper diagram, number ten is an area of pink bruising at the thumb side of the wrist. This had a slightly irregular sort of arrow shaped appearance within it, and a linear or straight mark within it, but overall together it measured 2.2cm by 2cm.

D

(pause)

E **[Witness 5]:** We don't have number 11 on this diagram so we'll skip straight to number 12, because we come to number 11 I think on the next page. So number 12 is a small, neat edged defect, so it's got smooth edges, on the fleshy part of the palm by the thumb, and it was half a centimetre, 0.5cm in length, so quite small, and there was a tiny dot like defect close by.

F Then if we look at number 13, there were two small skin defects now on the fleshy bit of the palm that's by the little finger. One of them was a linear or straight line mark, 0.4cm, and there were some little scratches around it and another small skin defect close by, only a couple of millimetres or less, and then number 14 you can see on the index finger, and this was a linear or straight line defect in the skin at the fold of the index finger, 0.6cm in length.

G

Mr Lobbenberg: Thank you. Can we go over the page, please? I think we catch up with 11.

H **[Witness 5]:** Yes, so number 11, you can see is the zoomed in image towards the bottom of that diagram, and it's showing the little finger side of the hand. So this was sort of towards the back of the hand and the edge, and it was an area of triangular shaped superficial lacerations, so a

scuff, a deep scuff to the surface of the skin that's broken the surface, and it produced an arrow shape or a triangular type shape and it measured 2cm by 2.1cm.

(pause)

Mr Lobbenberg: And then you examined the fingers.

[Witness 5]: So number 15 shows you a collection of multiple superficial lacerations, so again skin tears where the surface of the skin has been removed, and these were over the knuckles that are closest to the fingernails, affecting all of those fingers as you can see in the diagram. They range from a millimetre or so to up to 1.2cm by 0.9cm and the diagram gives you a good idea of the size of those marks.

(pause)

Mr Lobbenberg: Can we now move onto the legs? You found nothing on the trunk, did you?

[Witness 5]: No. Just that, that little puncture mark in the pubic region but no --

Mr Lobbenberg: Yes.

[Witness 5]: No other areas of injury.

Mr Lobbenberg: No other areas. So now the legs, please. Let's just complete this.

[Witness 5]: So on the next diagram you've got 16 and this is a punctate, again a tiny dot like skin defect on the outer aspect of the right thigh with a little bit of surrounding reddening up to 0.4cm.

Mr Lobbenberg: Over the page.

(pause)

[Witness 5]: And then if we deal with these from the top down, we've got number 17 is a faint pink bruise on the thigh, 0.7cm. Number 18 is a faint pink bruise just above the knee, 2cm by

2cm. Number 19 is rather difficult for you to see on your diagram because of the colouration, but it's a collection of three small abrasions or grazes just below the kneecap and together they measured 1.8cm by 0.8cm, and then number 20 is a pink bruise on the mid shin, 1cm by 1.5cm.

(pause)

Mr Lobbenberg: And can we move to the feet?

[Witness 5]: So we are then looking at the left foot, and number 21 is some faint pink bruising over the outer ankle bone, 2cm by 2cm with some speckling within it, and number 22 is faint purple bruising on the outer border of the foot, 1.5cm in diameter with a scratch or a sort of incision passing through it, so a very fine scratch. If you imagine things like rose thorns can produce a fine scratch, knife tips can produce a knife [sic] scratch, but when they're so small like that it's not possible to say for certain what has caused them, so just a very fine scratch within that area of bruising, and the scratch measured 1.5cm in length.

Mr Lobbenberg: Can I just have the overview last image up, please? So this is a, a summary effectively of the position.

[Witness 5]: Yes.

Mr Lobbenberg: With the fatal wound being marked in green?

[Witness 5]: Yes.

Mr Lobbenberg: And the wound caused by a knife in red?

[Witness 5]: Yes.

Mr Lobbenberg: Potential.

[Witness 5]: Yes, all of the ones in red are sharp injuries clearly caused by a sharp edge.

Mr Lobbenberg: Thank you. Now, now we've gone through the injuries, can I now move onto the next bit of your task? And that is to interpret. Can I just briefly deal with the toxicology? You had the benefit of a toxicologist report --

[Witness 5]: Yes.

Mr Lobbenberg: By Mr *Marden* that demonstrated that the concentration of alcohol was at 64 blood alcohol concentration which would not be expected to cause notable intoxication, the legal driving limit being 80.

[Witness 5]: Yes, that's correct.

His Honour Judge Mousley: Sorry, can we just have that again? Not likely --

Mr Lobbenberg: It's going to go into an agreed, it's going to go into an AF --

His Honour Judge Mousley: Yeah, I'd still like it, I'd --

Mr Lobbenberg: Later but --

His Honour Judge Mousley: I'd still like --

Mr Lobbenberg: For your --

His Honour Judge Mousley: A note.

Mr Lobbenberg: For the purposes of Your Honour's note, the, I'm at page 16 of the report. There's a blood alcohol concentration of --

His Honour Judge Mousley: Not likely to cause something?

Mr Lobbenberg: Would not be expected to cause notable intoxication. For reference, the legal driving limit is 80.

(pause)

Mr Lobbenberg: Now, when you reached your conclusions, these were based on your examination, on what you'd seen on the body worn video.

[Witness 5]: Yes.

Mr Lobbenberg: And I'm now on page 18 of the report. What was the principle injury?

[Witness 5]: So the principle injury was the stab wound to the front of the upper chest, just to the left of his body. The wound had passed into the chest from his front towards the back, upwards and slightly towards again that midline of the body. The wound had passed through the soft tissues of the chest wall and it had entered the chest by passing through the muscle between the second and third ribs. The wound didn't damage the cartilage or bone of the rib as it passed because it passed through the muscle between. It produced a glancing cut to the upper lobe of the left lung, and then it resulted in damage to the subclavian vein, that large vein that sits under the collar bone.

Mr Lobbenberg: And was it that damage to the vein that proved fatal?

[Witness 5]: Yes. That is the area of damage that has produced the very large collection of blood within his chest.

Mr Lobbenberg: And you said over a litre?

[Witness 5]: That's right. It had also resulted in what we call a pneumothorax so because it had also damaged the lung, it had allowed some gas to escape from the lung and when there is gas around the lung rather than within it, it stops it from being able to expand properly, so that will also not have helped his situation because it was, made it more difficult for him to breathe, and we've heard that the wound depth was estimated at 8cm and it's clear that he has died as a result of this injury.

Mr Lobbenberg: In layman's terms, has he effectively drowned in his own blood?

[Witness 5]: No, because he has not been inhaling large amounts of blood, but he has exsanguinated so he has bled --

Mr Lobbenberg: Bled out.

[Witness 5]: To death, yeah.

Mr Lobbenberg: He's bled out internally.

[Witness 5]: He has, yes.

Mr Lobbenberg: Is a better description.

[Witness 5]: Yes, that's right.

(pause)

Mr Lobbenberg: Let's move to the next one.

[Witness 5]: So Mr Nowak also had two stab wounds to the back of his body and those involved his right thigh and buttock. These had not caused any major vascular damage, but they had passed into soft tissues with would have contributed to a degree of the blood loss. They passed into the body from the back towards the front, upwards, and slightly towards the midline of the body, and those depths were estimated at 3.5cm and 5cm.

There was also the additional tiny punctate mark on the outer aspect of his right thigh which is number 16 on your diagram. So you can see it on your pictures, number 16. That, I, that in the report should say that could represent a knife tip mark but it's so small that it's simply not possible to say for certain. So I refer to it as being equivocal meaning we don't really know for definite what the cause of that little mark was.

There was an incised wound, so a cut, to the right lower face consistent with contact with a sharp edge. In the context of the case, that would be consistent with contact with a knife. I am aware of the fact that Mr Nowak was thought to have scaled a fence. I've seen the body worn footage. I'm not aware of anything sharp in that area that would account for that injury but that's obviously something I've considered when considering what the cause of that injury to that face is, but it looks like quite classically like a sharp cut.

There were some additional small marks around the face and neck, and again these are what we would call sort of equivocal marks. They may represent contact with a knife tip. They may be completely unrelated to a sharp item.

His Honour Judge Mousley: Sorry, which marks are these again?

[Witness 5]: So if we go …

(pause)

[Witness 5]: Your Honour, if you look at page 8 of the body maps where we're looking at the face and neck --

His Honour Judge Mousley: Yeah.

[Witness 5]: You can see, *I think* coming up on the screen for everybody --

His Honour Judge Mousley: Yeah.

[Witness 5]: Yes, you can see sort of four, five, six. These are all small, tiny little skin defects. They could be caused by contact with a knife tip but they could also be caused by anything else small that has broken the skin during the course of a tussle or him, for example, going over the fence, so again these, like the injury on the outer aspect of the right thigh, would be considered equivocal, so I can't say for definite what's caused them.

Mr Lobbenberg: So there's a distinction between those, four, five, and six, being equivocal, and SW1 which is definitely caused by something sharp?

[Witness 5]: Yes, so the, the ones that you see in your diagram that are red are very definitely caused by a sharp object. Those that are in black are more equivocal, some of them could have been caused by a knife tip but I can't say that for certain. The ones in red have very distinctive features that show they've been caused by a sharp edge.

Mr Lobbenberg: And moving, going back now --

[Witness 5]: So --

Mr Lobbenberg: To the top of your page 19 of the report --

[Witness 5]: I --

Mr Lobbenberg: And --

[Witness 5]: I *think* --

Mr Lobbenberg: Our pubic area injury.

[Witness 5]: So there was the tiny puncture mark to the right side of the pubic region. This is not an area that would normally be subject to medical intervention so it's another thing I always have to think about if there are tiny little puncture marks, is there anything that the paramedics have done during the course of their life saving treatment that might explain it? But in this scenario there would be no cause for them to do anything in this area, and we've also mentioned there was a corresponding defect in the outer, or the clothing rather I should say that he was wearing over that area, so there was a corresponding defect to the front of his boxer shorts, so again, in the context of this case, with both the injury, the overlying clothing damage, and the absence of any medical explanation for it, the appearances seem likely to represent knife tip contact.

Mr Lobbenberg: Right, so coloured red.

[Witness 5]: Yes.

Mr Lobbenberg: Now, let's go through now what your conclusions are about the other injuries that you found and what you say about those.

[Witness 5]: So there were marks to both of his wrists and the right hand, consistent with the application of handcuffs, so the marks that are on sort of the sides of his wrists, the back of his hands, are exactly what we might see if someone has had hand, handcuffs applied. There were

no additional marks to the body to suggest the use of excessive force by members of the public or by attending officers.

Having seen the video footage of the police attendance, and with my knowledge of the underlying pathology present, there's no reason to believe that the interaction with the police played any role in Mr Nowak's deterioration or his death.

Mr Lobbenberg: Can we just pause there? Because it may be important. The application of the handcuffs didn't make any difference to Mr Nowak dying?

[Witness 5]: No, I believe not.

(pause)

Mr Lobbenberg: You then go on to consider the mechanism of whether earlier intervention would have helped.

[Witness 5]: So he, from the body worn footage, appears to suffer from his cardiac arrest after a relatively short period of contact with the Police Officers. Given the severity and nature of the injury that he had sustained, earlier identification is not going to have altered the outcome. The injury is in a really tricky spot for people to find and you might be aware of paramedics who will open up people's chests to try and find damage that they can stitch up. The natural opening of the chest that they would do would not give them access to that area right up at the top of the chest, so they would have not been able to find that point of bleeding and do anything about it, so whilst there is a slight delay perhaps in the recognition of the fact that he's sustained a very significant injury, I don't believe that time period is going to have made any difference to the outcome.

Mr Lobbenberg: This was effectively a catastrophic injury.

[Witness 5]: Yes.

(pause)

Mr Lobbenberg: Now, you were asked to consider what the marks on the hands tell you about whether, for example, there was clear evidence that he'd been punching.

A

[Witness 5]: So there --

Mr Lobbenberg: *The* --

B

[Witness 5]: Were those superficial lacerations or skin tears to the backs of the fingers of his left hand. These are, are not injuries that are sustained in the landing of punches. These are the sorts of injuries that are caused by a rough surface, so if the hand scrapes across the floor, for example, or a rough edge of something.

C

The injuries could have been caused during a scuffle between the individuals, but it could also have been caused by him whilst he has scaled the fence, or where he has come down onto the ground. He is also moved quite quickly by attending officers when they do realise that he is deteriorating and has significant injuries, and they move him to a flat lying sort of position in order to give him CPR, and so simply the hands scuffing across the surface of the ground could account for those injuries as well.

D

E

Mr Lobbenberg: All right. So as you, as far as you're concerned, those injuries are not consistent with punching --

[Witness 5]: No.

F

(pause)

Mr Lobbenberg: What else did you find?

G

[Witness 5]: So there were also those tiny little injuries to the palm of the left hand. Again, they are the sorts of injuries that we might see in contact with a rough surface or gravel or things like that. They were not typical of what we refer to as defence injuries, so --

H

Mr Lobbenberg: All right. This is an important, I, matter, and I'd like you to explain what defence wounds, injuries are.

[Witness 5]: So if somebody is faced with a person coming towards them with a knife, they may reach out with their hands or their forearms either to push away or to grab at a weapon, or to shield themselves, and so we will sometimes see cuts to the palms of the hands, back of the hands, or either aspect of the forearms. So these are tiny little marks on the palm of the hand. They look to me more in keeping with contact with rough edges and gravel and things of that nature. They are not typical of defensive such as grabbing against a blade or putting your hands up whilst a blade is swiped at them.

Mr Lobbenberg: So, there were no typical defence wound injuries on Henry Nowak, were there?

[Witness 5]: That's right.

Mr Lobbenberg: And what does the absence of defence wound tell you?

Mr Wainwright: Your Honour, can I just approach my learned friend?

His Honour Judge Mousley: (indicates agreement)

Mr Lobbenberg: Yeah, of course.

(counsel confer)

Mr Wainwright: Your Honour, could I raise a point of law, please?

His Honour Judge Mousley: (indicates hesitation)

Mr Wainwright: It shouldn't take too long.

His Honour Judge Mousley: Yeah, I'm just wondering, have we, I wonder if Mr Lobbenberg could move on and then we could --

Mr Wainwright: Yes.

His Honour Judge Mousley: Perhaps --

Mr Lobbenberg: Yes, I'll --

His Honour Judge Mousley: Deal with *that* --

Mr Lobbenberg: Move on and then we'll come back to it when --

His Honour Judge Mousley: Yes.

Mr Lobbenberg: When we have our time for a cup of coffee, which we'll miss.

(pause)

Mr Lobbenberg: The toxicology, what did that tell you?

[Witness 5]: So this showed that he had drunk alcohol prior to the incident, but the blood alcohol concentration was modest and as we've heard less than the legal driving limit for England and Wales. He's therefore not significantly under the influence of alcohol at the time of the incident. There was also no evidence of any other drug use.

Mr Lobbenberg: Thank you. You then went to consider the bruising --

His Honour Judge Mousley: Just pause a moment.

Mr Lobbenberg: To the temple --

His Honour Judge Mousley: Sorry.

Mr Lobbenberg: And cheek.

His Honour Judge Mousley: Sorry, just pause a moment.

Mr Lobbenberg: Sorry, Your Honour.

(pause)

His Honour Judge Mousley: Yes, thank you.

(pause)

Mr Lobbenberg: Bruising to the temple and cheek.

[Witness 5]: So there was bruising on the right side affecting the temple and cheek. I can't exclude the possibility that these were as the result of inflicted blows to the area, so blows from another person, but there are potential alternative explanations. So there was some suggestion to me in the information provided to me that he might have hit his head on the ground or a parked vehicle when he came over the fence.

Also, as I mentioned, when I watched the body worn footage when they realise that he is unwell and move him to attempt CPR, his head does bump, the right side, up against the wall of the house as they move him into a, a flat lying position. So these may also account for the areas of bruising to the right side of his face, so there's therefore no definitive evidence of an additional element of blunt force assault, so by that I mean there is no definitive evidence of him being punched or kicked or anything of that nature.

Mr Lobbenberg: Now, I'd now like you to consider the, what the dimensions of the stab wounds tell us and I would like exhibit two.

Court Clerk: It's still not (inaudible)

(pause)

Mr Lobbenberg: Whilst that's being got, the dimensions of the stab wounds to the chest, thigh, and buttock, did they tell you something about what the knife would have been like?

[Witness 5]: Yes, so we look at the length at the skin surface and then we look how far it's gone into the body and that gives us an idea of the length of the blade that has entered the body and its size, so those injuries would suggest the involvement of a knife with a blade of 8cm or more in length, and not significantly wider than 2.5cm at points 5cm and 8cm from the tip, so that's

looking at the depth that it's gone into the body and the size of the skin wound it's produced at that point.

Mr Lobbenberg: All right, can you just wait there for a moment?

[Witness 5]: Sure.

(pause)

(counsel confer)

Court Clerk: *The large box?*

His Honour Judge Mousley: Yes, it's the larger box, please, for the witness. Thank you.

(pause)

Mr Lobbenberg: If you want to see that item with a scale, if you open your tab 2, you can see *a* various photographs. Tab 2, image 4 gives you the dimensions.

[Witness 5]: Yes.

(pause)

Mr Lobbenberg: Looking at that knife, is it consistent with the injuries caused?

[Witness 5]: Yes. The size is longer, apparently it's about 21cm, looking at the diagram. It's a little tricky to see the width at the respective measurements but probably about 2cm or so and we may see slightly broader injuries at the wound, at, at the skin surface if there is a little bit of movement involved, so it just extends the wound very slightly, so the injuries could have been caused by a knife of these appearances and dimension.

Mr Lobbenberg: Thank you. Is it possible to ascertain the force used to inflict these injuries?

[Witness 5]: So it's not possible for us as pathologists to be certain about the force, but what we can do is we can take into consideration the density of the structures that the knife has had to pass through in order to produce the injury. So for example, a wound that has passed just through soft tissues may not require as much force as one that has passed through, for example, the bone of the breast bone.

In this case, considering a sort of mild to moderate to severe scale, the injuries have just passed through soft tissues, they haven't had to pass through bone or cartilage, so it would be possible that they had been inflicted with relatively mild force. Once the skin is breached, a sharp knife will slip quite easily into soft tissues, but that is the minimum amount of force required. Could be mild, so it may well be that much greater forces were involved.

Mr Lobbenberg: But you can say that's the minimum?

[Witness 5]: That's right.

Mr Lobbenberg: Thank you, and because I failed to deal with it at the start, you of course have signed the usual declaration of independence as an expert?

[Witness 5]: Yes.

Mr Lobbenberg: Save for the matter we need to talk about, might the jury perhaps go and get a cup of --

His Honour Judge Mousley: Yes, I think we'll take a break.

Mr Wainwright: Your Honour, sorry to interrupt. I, I've got a few questions not on the matter. I, I wonder if I could just deal with those matters, and then if necessary cross examining on --

His Honour Judge Mousley: There we are.

Mr Wainwright: The other matter.

Mr Lobbenberg: I, no difficulty at all.

His Honour Judge Mousley: Thank you, Mr Wainwright.

A

Mr Wainwright: Yes.

(pause)

B

Mr Wainwright: You, you had a sentence put to you by my learned friend Mr Lobbenberg relating to toxicology.

[Witness 5]: Yes.

C

Mr Wainwright: Can you go to the part of your report, it's page 16 of ours, but I know numbering may be different.

D

[Witness 5]: Slightly different.

Mr Wainwright: Yes, it's headed toxicology.

[Witness 5]: Yes, I have that.

E

Mr Wainwright: Right, and the toxicological evidence came from Mr Madden which you refer to in your report --

F

[Witness 5]: Yes.

Mr Wainwright: And you were read part of a sentence by the Prosecution about the blood alcohol concentration not, would not be expected to cause a notable intoxication. Do, do you

G

have, it's paragraph 2.

[Witness 5]: Yes, I do.

H

Mr Wainwright: That sentence in fact starts out with the words:

> "in a normal social drinker"

doesn't it?

A

[Witness 5]: Yes, it does.

Mr Wainwright: So what we should read that sentence as:

B

> "In a normal social drinker, the blood alcohol concentration would not be expected to cause notable intoxication."

[Witness 5]: Yes.

C

Mr Wainwright: And just before that the toxicologist says:

> "The effect of such a blood ethanol concentration would have had on Mr Nowak [I'll take it slowly in case people want to make a note, so the effect that such a blood ethanol concentration would have had on Mr Nowak] would have largely depended on his tolerance to ethanol."

D

In other words, alcohol.

E

[Witness 5]: Yes. These are comments that they will always make because it's very difficult to determine the definitive effects of alcohol concentration within an individual. If somebody regularly drinks alcohol --

F

Mr Wainwright: Can you just take this slowly --

[Witness 5]: Yes.

G

Mr Wainwright: Because it's quite important, *please*.

[Witness 5]: Sorry, yes.

H

Mr Wainwright: So --

[Witness 5]: If somebody regularly drinks alcohol to excess, then their tolerance builds up to the effects of alcohol and they will be affected less than what we would refer to as a normal social drinker, but I think in this case perhaps the most useful thing from the jury's point of view is the reference to the driving limit blood alcohol because I think that gives us all a reference, so whilst we can't predict the exact effects, we do know that his blood alcohol was under the limit for legally driving a vehicle and so we can be confident that he is not going to have been significantly affected by alcohol in terms of driving ability.

Mr Wainwright: That's in terms of driving ability, but that particular limit is simply an *arbry* [sic] political limit --

[Witness 5]: Yes.

Mr Wainwright: It's not a scientific assessment of ability, is it?

[Witness 5]: Sure.

Mr Wainwright: And in other countries, for instance Scotland and elsewhere, it's 50 rather than --

[Witness 5]: It's --

Mr Wainwright: 80.

[Witness 5]: Lower, yes, that's absolutely correct.

Mr Wainwright: And as well as you've taken this drink drive as an indication, it would be right to say that somebody who wasn't used to drinking a lot of alcohol might have a lower tolerance.

[Witness 5]: Yes.

Mr Wainwright: Thank you.

(pause)

Mr Wainwright: That's all I've got to ask at this time, Your Honour.

His Honour Judge Mousley: All right, well we'll pause there, members of the jury.

(adjournment)

(no further questions of witness after adjournment, witness is released without being recalled back into court)
