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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London WC2

Monday 3rd April 2000

B E F O R E :

LORD JUSTICE JUDGE

MR JUSTICE WRIGHT

and

MRS JUSTICE RAFFERTY

R E G I N A

- v -

ROY JOHN BURNETT

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MR A DONNE QC & MR P DUGDALE appeared on behalf of the Appellant
MR JN DONNE appeared on behalf of the Crown

Evidence of Dr Shepherd and Dr Payne-James

Monday 20th March 2000

1. Dr Richard Shepherd; SWORN
2. Examination in chief by MR A DONNE
3. MR A DONNE: Dr Shepherd, your full names please, your professional address and your

qualifications?

4. A. My full names are Richard Thorley Shepherd. I am the head of the Forensic Medicine Unit at St Georges Hospital Medical School in South London. My qualifications are Bachelor of Science, Bachelor of Medicine, Bachelor of Surgery, Fellow of the Royal College of Pathologists and I also hold the diploma in medical jurisprudence.

5. Q. For how long, please, have you been involved in forensic medicine?

6. A. Approaching 20 years now.

7. Q. Advising and gave giving evidence on both sides, prosecution and defence?

8. A. Indeed, yes.

9. Q. Dr Shepherd, the Court has your report?

10. LORD JUSTICE JUDGE: Yes. Thank you very much for producing it, Dr Shepherd.

11. MR A DONNE: You were instructed initially by the Metropolitan Police?

12. A. I was indeed, yes.

13. Q. Your report is dated 26th May 1998.

14. A. It is.

15. Q. You have set out in that the documentation that you have seen.

16. A. Yes, I do.

17. Q. What I would like to do, please, if it is convenient to the Court is to look at page 1 and take you through the major points of the assaults in terms of her injuries as alleged by her and see what you found in relation to each matter.

18. A. Yes, indeed.

19. Q. In her statement, which I think you have and no doubt you will be able to look at if you want, in her first statement she said a stick was forced into her mouth.

20. A. Yes.

21. Q. Can we just remind ourselves of precisely what she had said about that. Page 3, it is the first statement:

“I started to scream but the man got out a piece of what looked like a part of a branch and pushed it length ways.”

22. (Indicating) The end presumably like that rather than that (indicating).

23. A. I interpreted it as side ways, length ways, across the mouth, but I have to confess it was not entirely clear. Length ways would, of course, be entering the mouth as I have described as being length ways across.

24. Q. But you have worked on the basis of that rather than that (indicating).

25. A. In the sense that that would I think be a better restraint using a piece of wood.

26. Q.

“Length ways into my mouth and he held it there with his hand.”

27. You have seen Dr Harris’s statement?

28. A. Yes.

29. Q. And the drawings I think.

30. A. I have -- I saw them when I prepared my report.

31. Q. Do you want to borrow mine? I have detached them for you, but I do not think on this particular point it is any assistance (handed to witness). There is no mention of Dr Harris, either in the statement or drawing, of any injury to her mouth?

32. A. None whatsoever.

33. Q. What, in your professional opinion, might you have expected to see if that allegation had been correct?

34. A. Had the stick been placed side ways across the mouth, as I assumed, I would have anticipated there would have been bruising and possibly laceration of the lips and the corners of the mouth, particularly -- forgive me, I do not have her statement in front of me, but she implies a significant amount of force was used to --

35. Q. I had hoped you had her statement.

36. A. No, I am afraid I do not.

37. Q. I am sorry. I asked that you should have it (handed to witness). If yours are numbered as mine are, Dr Shepherd, page three at the bottom. In any event, page three of her statement of 28th August, and it is the second half of the middle paragraph.

38. A. Yes, that is right. "He pushed it lengthways into my mouth and held it there with his hand". So I anticipate there would have been --

39. LORD JUSTICE JUDGE: And then "holding the piece of wood against me and pulling my head".

40. A. That is correct. So that obviously it suggests to me that some considerable force was applied across the piece of wood which would have resulted in injuries to, and around, the mouth, particularly the lips and gums, which are very sensitive to damage following trauma.

41. MR A DONNE: Can I draw your attention to her last paragraph? That at a time when the stick was still there, because she refers on the fourth page, line one of the second paragraph, to the wood disappearing, so assume the wood is still here with this description, dragging her backwards towards the ally, shoes not on the ground, being pulled back, top of page four, with heels dragging on the ground?

42. A. Yes.

43. Q. "All this time he held the wood in my mouth. He had hold of my uniform". So would what description --

44. A. Certainly it suggests to me that were the wood there considerable force, possibly some of the pulling force, would have been applied to the hand holding the wood, if not directly the wood itself, once again indicating that there should have been significant, easily identifiable injuries of bruising and laceration to the mouth and the area of the mouth.

45. MR JUSTICE WRIGHT: When complainant was interviewed a couple of years ago, she was asked about this, and said that she had the wood between her teeth. I do not know to what extent, if she was able to grip the wood between her teeth, that might mitigate any injuries to her mouth.

46. A. Yes. It may protect slightly, my Lord, the continuing pressure against the mouth, but I think in order to get the wood backwards to a point where it would be grippable by the teeth, except the very front teeth of course, it would have to be significantly placed in the mouth. I have some difficulties understanding the mechanism of how she would be able to grip in that sense.

47. MR JUSTICE WRIGHT: Unless the injury had already been caused.

48. A. There would have been injury caused in getting it there, but if she was able to grip it and fix the wood, that would then tend to prevent greater injury being caused during the dragging.

49. MR JUSTICE WRIGHT: Thank you.

50. MR A DONNE: For what it is worth, she described it as being about two inches in diameter, "appearing to be dead wood with knobly bits on it".

51. A. Yes.

52. Q. So quite sizable.

53. A. Quite a sizable piece of wood and of course had she made any attempt to shout or to scream, she could not continue to grip it with her teeth and to scream or shout at the same time. She would have had to have released it.

54. Q. I did not know, because I have not seen the interview in 1998, but she says that she had it in her teeth, but at the top of page five -- sorry, I gone on one page -- I beg your pardon. Now, anything more, Dr Shepherd, about the stick being forced into the mouth?

55. A. No. In a sense there is little pathologically to say because there is nothing to report in that sense --

56. Q. No, it is the absence.

57. A. It is the absence, and here I have to rely entirely on the report of Dr Harris. I do not believe there are any photographs of the --

58. MR JUSTICE WRIGHT: There is one where you can see her mouth. It is photograph two (shown to the witness).

59. A. That would confirm the absence of injuries.

60. MR JUSTICE WRIGHT: Or marks.

61. A. (Nods).
62. MR A DONNE: You have seen them?
63. A. I have them, but once again I am afraid I do not have them to refer to just at the minute (handed to witness).
64. A. But in this photograph quite clearly the lips are undamaged. There is no mark around... (showing the photograph to the court).
65. Q. B, I think we can take fairly quickly. She was thrown to the floor of a wooded area. That depends how hard she was thrown, on what she landed, but for what that one is worth, what might you expect to find depending on those two matters?
66. A. There is a photograph of an area, photograph 10 in the bundle. I would not anticipate major injuries to be caused by a fall to this area. There are twigs, there is the occasional stone, there are the three roots, so one would anticipate there may be scratches and bruises in several areas of the body, particularly those where the skin is exposed directly to the ground rather than protected by clothing.
67. LORD JUSTICE JUDGE: I am sorry, are you saying about that you do not have any significance to the absence of such injuries either way?
68. A. I have not actually commented specifically on that, my Lord, but I am saying that the type of injuries I would expect were, someone for fall to the ground. In the absence of those injuries, I think it is difficult to form any positive conclusion. Were she clothed, then that might protect the back from such injuries.
69. LORD JUSTICE JUDGE: Thank you.
70. MR A DONNE: I think it very much depends upon how heavily she had been thrown.
71. A. And how heavily she landed and how long she lay on the ground. Clearly there was a period of time when she was on the ground on her back.
72. Q. I am going to come to that.
73. A. Indeed.
74. Q. C. "Left arm placed over her mouth". That comes from page four of her first statement,

middle of the second paragraph. "He dropped my handbag. The next thing I knew he had moved slightly and still with his left hand forced against my mouth he put his right hand down" and so on. She having described earlier in the paragraph the piece of wood disappearing:

"I was lying on my back. He was lying across my body so his head and (...reads to the words...) against my chin."

75. Any comment on C?

76. A. Once again it depends a little bit on the type of -- the amount of force, but the implication is that using the words "forced against my mouth" would tend to indicate that the lips would be pushed backward against the teeth, which may well cause injuries to the inside of the lips. No such injuries are described.

77. Q. She does say in one place chin and in one place mouth.

78. A. Yes, pressure on the chin, if it is not implying a punch or a blow, it is just a push in, would not leave a mark but pushing of the lips back against the teeth with any degree of force may force the teeth to cut into the back of the lips.

79. Q. Arguably more importantly, the tights and knickers ripped off. Could I ask for your help please on photograph six and 7? Six principally, and you will I think have to demonstrate. You might find it difficult there with the witness box in front of you, but I think you are going to have to indicate to your groin area to your Lordships can see it.

80. LORD JUSTICE JUDGE: We have a photograph of the right inner thigh.

81. MR A DONNE: Yes, but it is the positioning of the hand, Dr Shepherd. I am grateful. If you could help about here please.

82. A. Yes. The pattern in photograph six, I have noticed that there are four horizontal fingernail type marks on the mid-part of the thigh running up the thigh.

83. Q. Just hold it there please (indicating on the photographs), and these are four red marks at this point in the photograph. I believe there is also a fifth mark closer to the pubic hair and slightly higher up the thigh, which I think is perhaps better seen in your photographs than in the photocopies.

84. LORD JUSTICE JUDGE: Yes.

85. A. That would fit very well with the four horizontal grouped injuries being the four fingers, and those marks caused by fingernails, the fifth separated being the thumb.

86. MR A DONNE: How do you envisage that hand? I will leave it neutrally for the moment.

87. A. In that case I think the hand -- the fingers are most probably downwards towards the back of the thigh with the thumb towards the front. So if that was my thigh and this is the pelvic region, the hand is coming down, it is the right hand coming down from above and gripping (indicating). Right hand on right thigh from the front.

88. LORD JUSTICE JUDGE: I am sorry, on that demonstration I cannot see the mark nearer the pubic area.

89. A. Right. We have the mark near in the pubic area, my Lord, is this one.

90. LORD JUSTICE JUDGE: Yes.

91. A. In that case I wonder if I can put my hand -- if my hand then comes on this in angle, (indicating) the four finger marks are easy. There you are. The higher one is the pressure from the thumb.

92. LORD JUSTICE JUDGE: I see. It is not clenched round the thigh.

93. A. I think it is slightly clenched but not entirely clenched.

94. LORD JUSTICE JUDGE: Very well, thank you.

95. A. It is a little difficult to assess the size of the thigh there, but certainly the four finger marks are more easily seen. The fifth one in its separation is not as broad perhaps as a whole hand, but the four fingernail marks coming down in this way.

96. MRS JUSTICE RAFFERTY: Is it a claw like placing of the hand on the thigh?

97. A. I think it is easy to associate the four finger marks together and say that they are very likely to be caused by a single action. The separate mark I think is a little difficult to say whether it was necessarily caused in the same action. It is quite close potentially, in which case it may be a claw. It may be a separate action from a single finger or a thumb at a separate point.

98. MR A DONNE: But the distance would be consistent with it being the thumb of the same hand.

99. A. It depends, of course, on the size of the hand and on the size of the thigh around which it is being placed, but I think the point that it is quite close is a fair one, but it could be the same thumb as associated with the fingers.

100. MR A DONNE: So it is the thumb nearest the pubic hairs and the fingers further down the leg in the position in which you have demonstrated?

101. A. Yes. The fingers are going to the back, and if that is a pattern --

102. Q. Sorry, I interrupted you.

103. A. No. Simply to say that if one looks at the fingernail marks they are slightly convex, what would be forwards, what is upwards in the photograph, implying that the fingers are from above and it is the right hand probably ripping the thigh, potentially it could be the left hand crossed over I suppose, but the fingers are coming from the front towards the back.

104. MR JUSTICE WRIGHT: Is that bruising which is nearer to the pubic area?

105. A. There are some marks there that I could interpret as bruising.

106. MR JUSTICE WRIGHT: It is not easy.

107. A. I am always very vary wary of bluish colours in photographs. They have a propensity for being slightly blue, some of the photographs, and shadows can look blue. It may be bruising. I do not think we have confirmation of that from Dr Harris.

108. MR JUSTICE WRIGHT: No.

109. MR A DONNE: Could you compare please those marks with the sort of the marks that you, in your experience, might expect to see if the hand had been that of an assailant as opposed to that of the victim, for want of a better word for at the moment, with her right hand. Now, if it had been an assailants hand in that area, what would you have expected?

110. A. The chances are an assailant's hand would have been orientated more possibly with the thumbs inward, attempting to move the legs outwards.

111. Q. And hold your hands up again please. You have there the thumb at the bottom.

112. A. The thumb at the bottom and the fingers on the outside. I should say Dr Jason Payne-James examines many more rape victims than I do, and his advice to you would be useful on

this as well. But the moving of the legs can be either this way or the application of thumbs, which would place the numbs on inside of the thigh and the fingernails on the outside, depending on how the grip is achieved (indicating).

113. Q. So in your view the marks that you can see in that particular photograph are more consistent with what?

114. A. They are consistent with a right hand close to the pelvic region causing a gripping, pressing the fingernails of the right hand into the thigh.

115. Q. But a right hand of whom?

116. A. Very difficult to be entirely sure, but it would be unusual for an assailant approaching from the front to use their right hand on the right thigh. Of course it would be the left hand on the right thigh in a front to front confrontation, and were this to have been approached from the back, the curve of the fingernails would then have been the other way up, so I am pretty sure --

117. Q. But there is no allegation that it was from the back.

118. A. Indeed, no, but just to try and account for a right and a right one would have to have the victim face down and the assailant approaching from the back. The pattern does not fit with that.

119. Q. E. She struggled violently. I think I will come back to that as an overall matter. She alleged as you know, in a second statement anal penetration.

120. A. Yes.

121. Q. Her wording of the injury about that was that she was penetrated for some distance. I am looking on page nine, which is her second statement page three, second paragraph, she was penetrated for some distance, some inches. The pain inflicted on her was unbearable. Movement up and down and then withdraw, and next page, page ten at the bottom for me, last sentence, second paragraph, "I have suffered great discomfort in my anus, and for about three days following the incident my anus bled". Mr Emes will be telling the court that she examined the internal anal swab taken by Dr Harris and found no sign whatsoever of blood upon it. Assume that the court accepts that from him, what do you say about that?

122. A. There was no evidence in Dr Harris's report of any anal injury at her examination. If the swabs were taken and showed no blood, that would tend to support Dr Harris's observations that there was no injury.

123. MR JUSTICE WRIGHT: Or put it the other way round. It is inconsistent with the allegation that she bled.

124. A. It is inconsistent, my Lord, that she bled for three days, and one would anticipate that the actions described would have left marks that would have been visible, and clearly Dr Harris has examined that area.

125. MR A DONNE: Albeit without at that stage, because it was within three hours of the event, any complaint of buggery.

126. A. Indeed. As I say, Dr Payne-James is the clinical doctor who would examine victims of rape more frequently than I, but would anticipate that it would be routinely included in the examination.

127. Q. In simple terms, if what she says is true, that she was penetrated and in extreme discomfort and bled from that part of her body, would you expect to find blood on the internal anal swab?

128. A. Swabs taken three hours after the event, yes, I would.

129. Q. And signs of injury?

130. A. I would anticipate there would have been at least some swelling and some redness identifiable. If the bleeding was present, I would have anticipated that would have been visible too, and also documented by Dr Harris when she performed her examination and noted it as she took the swab.

131. Q. G. An attempt at vaginal penetration prevented by the presence of a tampon, which was removed. Subsequent vaginal penetration and ejaculation occurred. She described that on page five at the bottom. Do you have the numbering at the bottom?

132. A. Yes, I do.

133. Q. Towards the end of the first paragraph she described what happened. "In relation to the ejaculation, I felt him ejaculation". She is describing while he is inside her. Then she says:

"I managed to roll over on my left side, his arm came away from my mouth. He rolled over on to his back. As I rolled over I felt semen running down my leg."

134. Dr Harris removed, or removed and retained, what I will call the replacement tampon.

135. A. Yes.

136. Q. Because, of course, that was three hours later. She had put in another tampon, which Dr Harris removed. Mr Emes examined that. Will you assume for the moment, this I understand will be his evidence, that there was no trace of semen on the tampon, the replacement tampon.

137. A. Yes.

138. Q. If her attacker had ejaculated inside her, she had replaced -- she went home and washed her legs is what she said. She replaced her tampon and was examined by Dr Harris within three hours.

139. A. Yes.

140. Q. If an attacker had ejaculated inside her, what would you expect to have found when Mr Emes examined the replacement tampon, so far as semen is concerned?

141. A. I would have anticipated there would have been semen on that replacement tampon.

142. LORD JUSTICE JUDGE: Even if she was menstruating?

143. A. Even if she was menstruating, my Lord. Even if she had washed, one would still be able to detect the presence of semen.

144. MR A DONNE: The time scale, three hours, is within the time scale that you would expect?

145. A. I believe Mr Emes will be able to give you better information, but it is possible to recover semen for many, many hours after --

146. LORD JUSTICE JUDGE: We are now looking at it the other way round. Is it surprising that no semen was found on the tampon?

147. A. If ejaculation had occurred, I think it is extremely surprising that no semen was detected on the tampon.

148. MR A DONNE: No semen was detected on the vaginal swabs taken by Dr Harris.

149. A. That is my understanding, yes.

150. Q. Assume that that is right from Mr Emes' examination, what do you say about that?

151. A. Well, I think the same comments apply. It is extremely -- had ejaculation occurred, the chances of the swabs being negative I think is incredibly small. In fact I do not believe that it could occur.

152. MR JUSTICE WRIGHT: Then turn it the other way around again, Dr Shepherd, the absence of spermatozoa, semen, on either the replacement tampon or the swab taken after simply for the express purpose of establishment, does it lead to you to conclude that there was no ejaculation?

153. A. That is the only sensible conclusion that I can reach in the face of a negative tampon and negative swab so quickly after the alleged ejaculation.

154. MR A DONNE: And as would be usual, there was taken an external vaginal, a low vaginal and a high vaginal.

155. A. That would be what I would anticipate, yes, and I assume that all three are negative.

156. Q. They are GH 1, GH 2 and GH 3. Assume again that the Court accepts Mr Emes' evidence that no semen was found on her clothing.

157. A. Once again I would find that extremely -- particularly the underwear, which is the area most likely to be contaminated, I would find that extremely unlikely.

158. Q. I remind you that she said that she felt semen running down her leg.

159. A. Absolutely, yes.

160. Q. So even if, as may occur, a mistake has been made as to whether there was ejaculation inside as opposed to ejaculation outside, if she has made a mistake and the ejaculation was outside only but sufficient obviously to run down her leg, what might you expect to find with the clothing?

161. A. I would anticipate then the possibility that the external vaginal swab would be positive for semen, of course depending on where ejaculation actually occurred, but the clothing that was replaced -- even the clothing that was replaced, the underwear that was replaced, should then be testing positive for semen.

162. Q. H, please. I think you have been guilty of a bit of artistic licence, the top of her nurses uniform was ripped off. What she actually said was "he ripped the top of my nurses' uniform". She did not use the word "off", so may we take that out of the your report? But even so, the ripping of

the nurses uniform, as she describes it, Dr Emes will say nothing. He examined particularly the lapels. There was no sign of injury to that. May be it is his expertise, but do you feel able to comment on that or do you leave it to him?

163. A. I can make no comment about tearing of clothing. I have not seen it and I have not seen Dr Emes' report.

164. Q. So, I, please. She described at page five, line one, paragraph three:

“When this man penetrated me, he ripped the top of my nurses' uniform. He fondled my breasts and bit me on my right breast and the top of my left arm.”

165. LORD JUSTICE JUDGE: I am so sorry, just one moment. Page?

166. MR A DONNE: Sorry, my Lord, page five if your Lordship's number is the same. Five at the bottom, beginning of paragraph three. Does your Lordship have paragraph 1, “this man penetrating me”?

167. LORD JUSTICE JUDGE: Yes, thank you.

168. MR A DONNE:

“When this man penetrated me he ripped the top of my nurse's uniform (...reads to the words...) at my body the whole time.”

169. I have done it all so that we can look at I and J in your report together without going back to her statement:

“I felt the biting on the right breast and the top of my left arm.”

170. You have seen the photographs. You have seen Dr Harris's sketches. Was there any injury consistent with that account? The biting of the right breast or the biting of the top of her left arm?

171. A. I can see no marks on her right breast that would indicate biting. There are some marks at the top of her left arm that are a little difficult to interpret. These are apparently two vertical --

172. Q. Paragraph 2?

173. A. I am sorry, yes, this is photograph 2, two apparently vertical marks. They could be grazes. The other alternative, and I notice that Dr Harris does not record this certainly in her drawings of the arm, the other alternative is that they might just be bite marks, but, if so, they would be bite marks inflicted by someone bringing their arm up. It is possible to achieve a bite mark at that

sight, and then would then, in that orientation, vertically down the arm, whereas another person bending forward to do it, so to speak, would tend to cause the bite marks horizontally, but -- forgive me, that is not asserting that those injuries are bite marks. If they are that is an interpretation of the them.

174. Q. They are not, of course, referred to in Dr Harris's statement.

175. A. They are not, but they are clearly seen in photograph two.

176. Q. Paragraph two shows the right breast.

177. A. It shows the right breast and --

178. Q. There is no indication there of any injury at all.

179. A. I can see no marks, particularly no marks that I would consider to be bite marks, on the breast, although I note that Dr Harris -- in the full body sketch, she does have an oval mark on the right breast, but I -- it is difficult to be certain what her indications mean in her drawings.

180. Q. Are bite marks, in your experience, fairly recognisable as bite marks?

181. A. Yes, most commonly they are quite clear. Oval with a pattern that should be identifiable easily as being that of a bite. I can see nothing in the photograph at all. I just draw the Court's attention to that oval mark on the diagram.

182. Q. My learned friend, and I am grateful, reminds me that in Dr Harris's statement she simply refers to that as abrasions and scratches.

183. J, grabbing and scratching at her body. Now, would you please go through the bundle, Dr Shepherd, starting with photograph one, and indicate how, in your view, those marks of injury may have been caused?

184. A. In the mid-part of the back there are a group of vertical, or approximately vertical, scratch marks. In my opinion these are typical of fingernail type marks, and it is most likely that they are travelling from below upwards towards the neck.

185. Q. Why do you say that?

186. A. They tend to fade off upwards, and that is the general pattern. The striking feature here is that they form a relatively discrete lower line at the bottom.

187. Q. You can you draw your pen across them?

188. A. I place my pen. There is a relatively clear straight line. It is not absolute, but certainly nothing --

189. Q. Where they end.

190. A. Yes, in fact where they start.

191. Q. I was going to say or where they start depending on --

192. A. Is the truth. In my opinion these injuries are absolutely typical of self-inflicted scratching injuries where the individual has placed their arm over their back to about the level of the mid-part of the shoulder blade and has then scratched up upwards by drawing the arms --

193. MR JUSTICE WRIGHT: Are you inviting us to infer that the reason why they all start at the same level is that that is the limit of the individual's reach?

194. A. That is correct, my Lord, yes, or quite close to it. Of course I am not saying she could not have stretched another half inch.

195. MR JUSTICE WRIGHT: No, but a convenient reach.

196. A. It is the level of convenient reach, and it is actually striking here that the right side is more prominent than the left, as one would anticipate in a right handed individual.

197. LORD JUSTICE JUDGE: Are you leaving that photograph?

198. MR A DONNE: I was leaving that photograph, my Lord, yes.

199. LORD JUSTICE JUDGE: I understand your opinion that those marks are absolutely typical of self-inflicted injuries or scratches. Is there anything in the statements of the complainant which you can remember which could explain these injuries as the injuries inflicted by her assailant?

200. A. I do not believe that injuries inflicted by a third party would have this pattern, straight lower edge, the entirely vertical pattern. I have never seen this type of injury with those features inflicted by a third party. Neither have I seen them so clearly demarcated or so clearly patterned on someone who has been on rough ground, moving around, being moved around. So they are not those of an assault, and they are not those of being on the ground, but they are those of self-inflicted injuries.

201. LORD JUSTICE JUDGE: I think it would be helpful if we could maintain that pattern as you deal with each photograph please. The doctor's opinion and whether there is anything the other way that he needs to draw to our attention.

202. MR A DONNE: Certainly. Thank you, my Lord.

203. Photograph 2.

204. A. Photograph two. Apart from the marks to the left arm that I have already mentioned, there are some marks over the left collarbone. These are described by Dr Harris. They are rather indistinct marks, the causation of which is quite broad.

205. Q. Plainly within reach of the complainant herself.

206. A. Yes, they are within reach of the complainant. They could also possibly be caused by someone, and this could be anyone, pulling on clothing and rubbing at that site. So these are rather indistinct injuries whose causation is difficult to form a conclusion about with certainty.

207. Q. So looking at the other side of the coin, at what she has said, do you say those could have been caused by her assailant pulling on her clothing?

208. A. Yes.

209. Q. Or indeed her pulling on her clothing?

210. A. They could be caused by clothing being pulled and chafed against the skin. I would have to be with some considerable force, the level of force that perhaps might cause damage to the clothing. It is not just simple pressure. It is significant pressure, probably more than one application to cause this degree of chafing to the skin.

211. Q. I appreciate that you have indicated that the damage to clothing is not your sphere, but if grabbing clothing had been a cause of, I take it shortly, those marks, how heavily would the clothing, in your view, have to be grabbed? What might the damage be?

212. A. It was my understanding that she was wearing a nurses uniform.

213. Q. Yes.

214. A. And there is some variation in the strength of fabric, but taking it broadly I would --

215. Q. It is a coat with lapels.

216. A. A coat with lapels and a nurse's uniform. It would be the lower -- the material that is against the skin that that is going to be important for causing the damage to the skin rather mother than the coat, unless the underclothing is something removed and then the coat is of course pulled against the skin. So I would be more interested in the nurse's uniform, that clothing, than the heavy coat or the top, in which case it is more likely than not, I would anticipate, to be damaged by the sort of chafing -- pulling needed to cause this injury.

217. Q. If those marks had been caused by contact with the nurse's uniform, which is the undergarment from the coat, you might expect some indication of damage to the --

218. A. It is possible, but it is outside my field, but clearly depends on the strength. A light chiffon would tear more easily than a heavy linen.

219. MR JUSTICE WRIGHT: I did not think nurses wear chiffon.

220. A. I was just about to add, my Lord, that I do not think nurses do wear that. It does tend to be more of a heavy linen than...

221. MR JUSTICE WRIGHT: Do not forget, Mr Donne, that Mr Roarke I think did say that there was a torn collar.

222. MR A DONNE: Yes. The right arm on the laser prints anyway --

223. LORD JUSTICE JUDGE: Just before we leave the top half of the front of the body, the diagram shows a number of scratches beyond those that are immediately apparent, and I just wondered whether Dr Shepherd was wanted to comment on the photograph. If you could look at -- I am sorry, you were there when we went through what we did not have, but the first diagram that I have shows the front of the body?

224. A. Indeed.

225. LORD JUSTICE JUDGE: And it shows scratches at the angle that I think is pretty obvious from the photograph, but not perhaps so obvious, scratches running more horizontally, and then a separate and yet another line. Could you comment on all scratch marks on the assumption that Dr Harris is producing the sketch of the scratch marks that she found?

226. A. Indeed. I think it is also possible to see, just looking at the hairline on the margin, some red marks just at the tips of the clavicles, which I think are marked in Dr Harris's diagram as the two lines in the circle presumably representing the bra strap. I think they can perhaps just be seen

personal, certainly in my laser print copy.

227. Dr Harris's marks, if I take them to be as she describes them, are very superficial marks, the causation of which is difficult in the sense in their absence to determine. Undoubtedly they could be self-inflicted, but they could be caused by other actions as well and could be caused by a third party.

228. LORD JUSTICE JUDGE: Very well. Thank you.

229. A. But they are so faint as to have faded by the time the photographs were taken, and I am afraid I cannot assist you quickly with the timing between Dr Harris's examination and the taking of the photograph, how many hours it was.

230. MR A DONNE: The photographs were taken on the 20th, but there is no time --

231. MR JUSTICE WRIGHT: It is the same day as the examination.

232. MR A DONNE: Yes.

233. LORD JUSTICE JUDGE: Very well. Thank you.

234. MR A DONNE: In photograph two, before we move on, the top of the right arm, certainly in my photograph...

235. A. Yes, there are some minor grazes. Once against somewhat less in the photograph than in Dr Harris's drawing of that part of the arm. I would assess these are being difficult to determine the exact cause of. They are at a site that may be where injuries may be caused by gripping or holding by an assailant, but they are not of the type of injury that I would anticipate would be caused, particularly by someone wearing a coat that was interposed between an assailant's hand and her skin. These are very small areas of scratching apparently on the skin. They could be caused -- self-inflicted, but they do not have a typical pattern of such infliction. They could be caught by a third party, but I have some problems in determining how that could be caused were the clothing to be as described.

236. Q. It may be of significance, I do not know whether you have seen the medical reports on the appellant's left hand. Have you?

237. A. I am aware of some mention of a slightly weakened left hand, but I have not seen anything further about it.

238. Q. Just in relation to that mark, if they had been caused by an assailant through clothing, through her clothing, what sort of force might be required to cause those marks?

239. A. They would be very difficult to cause actually front to front. Generally speaking, the front to front approach would tend to put the bruises round the inside and the outside, or may be even the back of the arm, as the hand encircles it. In order to call --

240. LORD JUSTICE JUDGE: Forgive me, we do have to be rather careful. Those injuries are perfectly consistent, are they not, with somebody being dragged, standing up, by somebody grabbing her with her arm. It does not have to be in the process of sexual intercourse.

241. A. No. I do not think more they could be caused easily by someone being dragged by being held by that arm. The pattern of injuries would, I would anticipate, be difficult were someone held and dragged. The bruising would be to the sides of the arms, not as we see it here, to the front. This is almost pinching or gripping injuries to the front where little bits of skin are held rather than the whole arm.

242. MR JUSTICE WRIGHT: You would be looking for finger marks around the arm, would you?

243. A. I would anticipate -- if there was not a thick coat to preclude there being a sensible formation, one would find a thumb on the inside of the arm and the forefinger tip marks to the outside of the arm. But these --

244. LORD JUSTICE JUDGE: I am very sorry, but why on earth cannot your hand be held the other way around? If somebody with the left hand -- assuming the left hand were up to it -- I am just slightly troubled about the of science that there is about this and the amount really an awful lot of anything can happen.

245. A. That is all the case, my Lord, and of course we do not know how many applications could occur which can overlay injury upon injury. The point I am attempting to convey is that one would not get this little groups of small injuries on the arm in a gripping. One would get groups of bruising. Perhaps I am overegging the pudding by trying to describe it too clearly.

246. MR JUSTICE WRIGHT: And separated by the distance between the finger tips and the thumbs.

247. A. Providing there was one clear mark one may see a separation.

248. LORD JUSTICE JUDGE: Thank you.
249. MR A DONNE: Photograph three is her right side, her back is toward the left of the photograph, her front is to the right of the photograph, and it is her right side below the bra.
250. A. That is correct.
251. Q. What do you say please about those marks?
252. A. These are some parallel, slightly curved marks best seen in the diagrams that I have of the back. We have the side but it only appears to be the left side. They are slightly curved toward the back, dipping down and becoming more horizontal at the front. These, in my opinion, are once again typical of a self-inflicted group of injuries with the hand being place around the back as far as is convenient, and then being drawn forwards, and there is a natural slight curve in such an action.
253. MR A DONNE: Can you demonstrate it again in a moment. Wait a moment Dr Shepherd.
254. A. There is a natural downward slope from the anatomy of the arm.
255. Q. Sorry, go on.
256. A. Forgive me, I was going to say once again the marks are typical of minor grazes which I would find would fit completely with fingertip, fingernail type scratches.
257. Q. Anything --
258. MR JUSTICE WRIGHT: There is no suggestion, is there, that her fingernails were (inaudible)?
259. A. I am not aware of whether Dr Harris took fingernail clippings.
260. MR JUSTICE WRIGHT: Scrappings.
261. MR J DONNE: My Lord, there is no indication at all.
262. MR A DONNE: Is there anything in the photograph of those marks to suggest or tend to suggest where they started and where they finished? In other words, where you said, before the ones on back they appeared to be coming upwards?
263. A. These are less clear, but I think there is a clearer line to the back and a fading off to the front, suggesting, as I demonstrated it, that it is a starting at the back with the hand being drawn

forwards and terminating towards the front.

264. Q. So the same feature as photograph one but less marked?

265. A. Yes, it is less, certainly in my copy.

266. Q. Is there anything in that photograph, those injuries, that you can marry up with what she says in her statement about the injuries that she says she sustained and how she sustained them?

267. A. She described this action of his hands, I think, where may be you can help me with the exact wording, but she says his hands were scratching at several areas to her.

268. Q. I think it is the bit I looked at before, "he was grabbing and scratching at my body the whole time".

269. A. Yes. Apart from that general statement, and I do not believe these injuries are at all consistent with a third party assaulting this lady, apart from that, I can find no link with her statement.

270. Q. Photograph four please, her left hand side again.

271. A. Yes. Photograph four has injuries of very similar characteristics. Indeed at the lower margin there is a clear group, to my eye, of four parallel, although slightly closing, four parallel grazes running from the back to the front absolutely typical of fingernail scratching.

272. Q. Can you demonstrate again how?

273. A. Yes. Once again here the hand is not perhaps so far back, but there are four clear marks here, running parallel, grouped together, typical of the fingers just at this point not reaching round to the back but to the side and then being pulled forward. Clear back margin, fading front margin (indicating) and there are some less clearly marked, less clearly identifiable marks also on the skin of that side.

274. Q. Marrying up, or trying to marry up, again with what she has said, any different comment to the one on photograph three?

275. A. No, the comments I made about photograph three apply to this photograph too.

276. Q. Five, please.

277. A. Photograph five is of the buttocks, and is this is shown -- these marks are shown in Dr

Harris's diagram of the back of the body. These are a group of over the left buttock, slightly rising grazes over the right buttock, rather more horizontal. Once again these appear to originate in the natal cleft and the scratches travel outwards, and I would interpret these once again as being typical of inflicted by the person themselves.

278. MR JUSTICE WRIGHT: You mean they travel outwards from the centre line?

279. A. They travel outwards from the centre line, although that is not perhaps -- the main distinguishing feature I think is the rising -- the fact that they travel upwards in the body, an action that one's own hand would do, where you wanted to do it. Of course an assailant from behind would tend to pull it -- the buttocks much more horizontally or even downwards because of their position, but typical once again I believe of self-inflicted scratches.

280. MR A DONNE: Six you have dealt with.

281. A. Indeed.

282. Q. Seven --

283. LORD JUSTICE JUDGE: And not at all consistent with a third party.

284. A. I am sorry, this is photograph five.

285. LORD JUSTICE JUDGE: Five, yes.

286. A. I can find nothing in her statement, my Lord, that would fit with this injury at all. There is talk of buggery, but there is no suggestion -- I do not remember seeing of scratching or grazing. These are not marks that one would anticipate to have occurred on the buttocks on an uneven or stony or twig strewn ground. These are so typical of finger name scratches, so, no, not consistent.

287. MR A DONNE: Six, you have dealt with, but I will ask the other half of the question about whether there is anything in her statement and your views as to whether or the likelihood of those being caused by a third party?

288. A. I cannot exclude, I think, their being caused by a third party, provided the third party can arrange the hand or hands in such a way as to cause this injury, and we discussed earlier in my evidence the orientation necessary, the hand coming down from the front to the back to cause these marks. I cannot exclude it being a third party.

289. Q. But you made your point about which hand and --

290. A. Yes, and clearly there are well defined fingernails on the hand that caused this -- to have caused those clearly identifiable fingernail marks on the inside of the thigh.

291. Q. Photograph seven please, top of the left.

292. A. Yes. Photograph seven is the top of the other thigh. Dr Harris has drawn and described some minor scratch marks running parallel when you hit the line of the underwear. I think it is difficult to interpret these on their own. They are small scratches. They could have been caused by Miss Owen(?). They could have been caused by the individual themselves.

293. Q. Anything in photograph eight on either question, self-infliction or third party?

294. A. Only to just draw attention, that is the closest I think we get to actually seeing whether or not this lady had any fingernails, and I am afraid it is not clear there -- the suggestion that is the closest. I was hoping there might be a finger in one of the other photographs. To answer your question, no, they are minor bruises described as on the knee and on the shin. I cannot comment on the causation of these.

295. Q. Your comments are on the third page of your report.

296. A. Yes.

297. Q. Dr Shepherd, I think we have covered almost all of it. The vaginal penetration and attempted vaginal penetration, no injury was found by Dr Harris to the genitalia. Any comment on that? We have dealt with the anal injury, but --

298. A. I would anticipate that had penetration occurred, not necessarily an injury, but there may have been some mark, if only reddening, around the vaginal entrance would have been found.

299. LORD JUSTICE JUDGE: That is not telling us whether she was victim of rape or not, is it?

300. A. No.

301. LORD JUSTICE JUDGE: There may have been marks. Sometimes there are rapes which take place where there are no such marks.

302. A. That is correct, and I think the absence of marks I do not think can be allowed to preclude that possibility.

303. MR A DONNE: Is there any further information that has come to hand since your report, or

any questioning by the Court or me this morning to lead you to any other conclusion other than those contained and summarised in four and five on the third page?

304. A. No, none whatsoever.

305. Q. Thank you?

306. LORD JUSTICE JUDGE: Do you wish to cross-examine?

307. Cross-examination by MR J DONNE

308. MR J DONNE: Dr Shepherd, can I just ask you about two matters please? The scratches to the top of the back you have described as being typical of self-inflicted injuries. Some of those scratches have a distinct kink or dog leg in them, do they not?

309. A. Yes.

310. Q. How do you explain those? Photograph 1.

311. A. Yes. On the left hand side particularly, they are just to the side at the back, there is a dog leg. I explain that by the hand moving in an irregular fashion over the back.

312. Q. Just think about it for a moment. I am sorry to interrupt, but taking the one to the left as we see it.

313. A. Yes.

314. Q. Which has quite an acute angle --

315. LORD JUSTICE JUDGE: Sorry, is this left of the mid-line?

316. MR J DONNE: Left of the mid-line as we look at the photograph, my Lord.

317. First of all, which hand would you say she must have been using to cause that scratch?

318. A. I think it is more likely than not using her right hand and reaching across to the left side of her back, mainly because the major component appears to be the diagonal 45 degrees one.

319. Q. I follow. Then the minor scratch, which travels upwards and, if anything, towards the left, does it not?

320. A. Yes.

321. Q. Which would be quite, would it not, difficult motion to do, if one is scratching, to change direction.

322. A. It is possible. It is difficult -- it would be pure speculation, I must say, to try and give you a positive answer to that question. A possible answer, and it is only a possible answer, is that this was formed -- being caused under clothing, and that a ring or some other object snagged on the clothing, causing that, but that can be only speculation in this case.

323. Q. Yes, and again the one to the right of the mid-line, towards the bra strap, has a curve.

324. A. It does.

325. Q. And then orientates almost directly upward.

326. A. Yes.

327. Q. And again you say that that simply could be either scratching over the clothing, causing the motion, or causing of a direction of the hand?

328. A. Not over clothing, putting the hand beneath the clothing. Yes, that must be speculation. The features here, the line at the bottom, the roughly parallel nature and the pattern of the injuries is suggestible of self-infliction, even though there is some -- within them it is accepted there is variability between the patterns and direction of the scratches.

329. Q. There seem to be some scratch marks. They are quite faint, but they really are in very much a 45 degree angle from the mid-line towards each shoulder.

330. A. Yes, there does seem to be something going up at those two sides.

331. MR JUSTICE WRIGHT: Going both ways?

332. A. Yes.

333. MR JUSTICE WRIGHT: Angled to the left and to the right?

334. A. That is correct.

335. MRS JUSTICE RAFFERTY: Is the constellation of marks to which counsel has just taken you, Dr Shepherd, consistent with one application of the fingers on the hand and subsequent or previous applications of one finger?

336. A. The pattern suggests to me, my Lady, that there have been a number of applications, some of one, some of more than one. It is not always possible for all five fingers necessarily to make contact all of the time.

337. MR J DONNE: I appreciate to some extent we are in the realms of the speculation, and there are really two broad hypothesis. One is totally self-inflicted, the other is inflicted by a third party, by an assailant.

338. A. Those are the two ends of the spectrum.

339. Q. It may be impossible for you to say, but broadly speaking, are you of the view that all of these injuries appear to have been caused at about the same time?

340. A. The timing of injuries is, of course, a very difficult area, but, yes, they do appear to my eye to have been caused within a broad spread of time together.

341. Q. One possibility, and again one has to be careful with speculation, is of the exaggeration of injury. In other words, some injury caused by an assailant, but which had been exaggerated.

342. A. Of course, yes.

343. Q. Can you exclude that?

344. A. In this particular injury you have drawn attention to two marks, or particularly that dog leg, which is slightly different. I would -- to rebut that I would draw attention to the fact that it too starts at that horizontal line at the bottom, and despite its unusual characteristic, has the main components of self-inflicted injury, but I could not say with absolute hundred per cent certainty that could not have been an injury and the others have then just been added on top factitiously.

345. Q. Yes. I have no doubt you also considered, in your opinion, the overall impression one gets from all of these injuries.

346. A. Indeed, yes.

347. Q. Can I turn to a different topic please, and that is the allegation or complaint by the complainant of anal intercourse and bleeding for three days from her anus, and I appreciate what you have said, that you would have expected, as a matter of course, a police surgeon or forensic medical examiner to have noticed such an injury, and certainly in relation to the taking of samples from that area, it should have been quite obvious.

348. A. Yes.

349. Q. Just deal with this very briefly. The insertion of an object into the anus sufficient to stretch the anus can cause splitting; is that right?

350. A. It can.

351. Q. The fissure resulting from that splitting could vary in size depending on the splitting mechanism, the size of the object and so on?

352. A. Absolutely.

353. Q. But is it right that such fissures in such an area in fact heal very quickly, and do tell me if --

354. A. I think that is probably -- the short answer to that would be healing is going to depend upon the size of it. A very small injury, and I am taking a broad term as I have no specialist knowledge about the anus and healing, a small injury will heal quicker than a bigger injury, so I suppose in broad terms the answer to your question has to be yes. But I think Dr Payne-James, with his experience of sexual assaults, may be better able to advise you on this than I.

355. Q. I follow, and the only point I was really seeking to deal with through you, and if this is beyond your particular expertise please say so, is just how likely it is that this woman will be bleeding from her anus for three days after an assault of the kind alleged?

356. A. I think that would perhaps be better addressed to Dr Payne-James. He has so much more experience in this field, or that particular area, than I do.

357. Q. Certainly. Thank you very much.

358. MR A DONNE: I have no re-examination.

359. LORD JUSTICE JUDGE: Thank you very much indeed. We are very grateful to you.

360. (Witness leaved the stand)

361. LORD JUSTICE JUDGE: I suppose I better formally say you are released and that you can go back to your other duties. That can apply to any other witness.

362. Dr Payne-James; SWORN

363. Examination in chief by MR A DONNE

364. MR A DONNE: Dr, your full names please, your professional address and your qualifications.

365. A. My name is John Jason Payne-James. My professional address is 134 Lauriston Road, London. I am Bachelor of Medicine, a Bachelor of Surgery, Fellow of the Royal College of Surgeons of Edinburgh and of England and a Master of Laws.

366. Q. I think your expertise in this matter is set out in paragraph one of your report dated 26th May 1999.

367. A. That is correct.

368. Q. You have seen the complainant's statements.

369. A. I have.

370. Q. Photographs?

371. A. Yes.

372. Q. Dr Harris's body charts?

373. A. That is correct.

374. Q. Dr Shepherd's report and Miss Davis's report?

375. A. That is right.

376. Q. I am going to take the matters reasonably shortly in the light of Dr Shepherd's evidence already, but some topics please. The last matter that my learned friend was asking him about, the anal penetration, the degree of bleeding, her statement that she was in extreme discomfort and bled for three days, and Dr Harris's negative findings and no blood on the internal anal swab. Can we take all those matters please, and what do you say about those?

377. A. In view of the description of what happened and the description of pain, which I think lasted for three days, and bleeding for three days, I believe that the pain was very, very severe as described at the time, I think it is unlikely, virtually impossible, that there would be no physical findings following anal penetration and the subsequent injury. The mechanism of injury that one has to assume is that forcible anal penetration, in this case allegedly with her, the penis suddenly

dilates and stretches the anus itself, and a tear or a laceration or a fissure, the words are used interchangeably, develops in the lining of the anus. This is a finding that happens in many other situations, for example people who have very severely constipated can develop sudden pain and bleeding related to the development of an anal fissure. The mechanism and the effect is the same, and that pain can be very, very severe, and certainly somebody who has recently developed an anal fissure or laceration or tear would be very, very wary of allowing anyone to examine their anus or their rectum.

378. I think that it is, in my view, virtually impossible that no mention at the time of Dr Harris's examination would have been made of the symptoms that had been previously described in the statement.

379. Q. You do, I am sure, appreciate that at the time she was examined by Dr Harris she had not told anybody that she was alleging that she had been bugged?

380. A. No, I am very aware of that, but having said that, the pain that is experienced by such tears or fissures or lacerations is really quite severe. Many people, say, who develop an anal fissure or tear as a result of constipation and difficulty in passing motions function, will present to a hospital casualty department or their general practitioner with acute and severe pain if it persists.

381. LORD JUSTICE JUDGE: I can understand that if no complaint of buggery had been made and the doctor had not had reason to examine the anal area, silence might very well have reined, but here we have an anal swab taken. It is difficult to see at the moment to see how that would not have caused some reaction in the patient.

382. A. Yes. I just do not -- I do not think there would have been any question that some expression of discomfort would have had to have been made and some observation by --

383. MR JUSTICE WRIGHT: Some observation of the injury or blood?

384. A. Well, if I can just mention, you would not necessarily see the tear because it is actually within the anal canal. The anal canal is about an inch and a half long, and it is the tissue that lines that canal becomes torn, so not necessarily seen, and in fact one of the problems is caused because of the pain the sphincters, the actual muscles around the anus, go into spasm. That partly causes the pain and also makes examination very difficult, if not impossible.

385. LORD JUSTICE JUDGE: Thank you.

386. MR J DONNE: Even if, at that the stage, she was unwilling to tell anybody that she had been bugged, when an internal anal swab was taken by an experienced police surgeon, would you expect the police surgeon to notice flinching or discomfort or something?

387. A. Yes.

388. MR JUSTICE WRIGHT: I understood you to be saying in the report that you do not think that the doctor would have been able to take an anal swab.

389. A. That is correct.

390. MR A DONNE: The lack of blood on the internal anal swab when examined by Mr Emes?

391. A. I think it is surprising. What is not clear from Dr Harris's report is whether, and again this reinforces what my earlier opinion -- is that in some instances we pass what is called a proctoscope, which is a telescope, a rigid metal tube which passes into the anus so that one can visualise the inside of the rectum, I think the fact that there is no mention that a proctoscope was used. Having said that, if there had been a tear it would not have been possible to use it in the first place. But bleeding can of course go into the rectum and also externally. It does not necessarily have to show externally, but in that case by passing a swab through the anal canal without a proctoscope, which is dilating that canal, no, I would expect for them to be there.

392. MR JUSTICE WRIGHT: You have to use a proctoscope or something like it in order to take an anal swab?

393. A. No, you do not have to, because a swab is just simply like a cocktail stick with a bit of cotton wool on the end, and it is quite possible to pass that into an anal canal, and quite painlessly, in somebody who has a normal anal canal.

394. MR JUSTICE WRIGHT: Not if it is injured.

395. A. Not if it is traumatised.

396. MR A DONNE: I am looking at your comments at 9(4). The absence, so far as it goes, of any injury to the vaginal or vulva region, you make the point that in over the half the complaints there is no sign of injury.

397. A. Yes. The absence of injuries is as significant as if -- the absence of injuries does not mean that no vaginal penetration took place.

398. Q. The converse plainly in about half the cases, there is some --

399. A. Yes, about half the cases of non-consensual vaginal intercourse.

400. Q. The ejaculation please, according to her statement, inside her, then feeling semen running down her legs, washing, but then the external, the high and the low vaginal swabs taken by Dr Harris. All of those, and the clothing, if Mr Emes' evidence is accepted, no semen was found on those. What do you say about them?

401. A. Following vaginal intercourse, where ejaculation has taken place, we would normally expect, within 24 hours of examination, for there to be semen or spermatozoa present within the vagina, so I would find it very surprising that there was no evidence within I think two to three hours of the incident having taken place.

402. Q. Any difference because she was menstruating?

403. A. No.

404. Q. Would you have expected or not to have found, if she was right and he had ejaculated inside her, to have found some evidence on the replacement tampon?

405. A. Yes. I would have expected to find it possibly there or on any of the internal vaginal swabs.

406. Q. Clothing?

407. A. I would say that is outside my area of expertise, but had she sworn, for example, pants afterwards, but I believe -- I cannot recall whether they were removed or tights -- but it is very common to have staining of both, of semen and spermatozoa, on clothes that are still being worn because of the normal postural drainage from the vagina when standing.

408. Q. If she had been attacked and ejaculation inside her and she had replaced her pants and then gone home --

409. A. Yes, I think it would have been -- it would be possible to do it. You cannot be absolutely sure, but yes, you would expect some evidence somewhere I believe.

410. Q. Lastly please, although you have dealt with it fairly briefly at paragraph eight of your report, you have examined the photographs, you have read Dr Shepherd's report. You say you agree with his assessment. You have heard his evidence this morning. What experience do you have

of allegedly self-inflicted wounds?

411. A. I see each year perhaps a thousand or so individuals in relation to assaults and injury. Some of this is in police custody, some of these are victims. I would say that probably ten to 15 per cent of the patients at the prisons that I see will have at some stage have had deliberate self-harm of varying forms, and so it is very common to see, or relatively common for us to see, examples of self-harm.

412. Q. When you say they it had to have been proved --

413. A. Yes.

414. Q. So there is no --

415. A. Or admitted by the individuals themselves or witnessed.

416. Q. Admitted by them?

417. A. Yes.

418. LORD JUSTICE JUDGE: They are sufficiently common for you to be able to form a pretty clear view about --

419. A. Yes, and there are established types and patterns of deliberate self-harm, and as Dr Shepherd has explained, these fitted very closely to what we would term as typical.

420. MR A DONNE: I was actually going to ask you, are you in a position say how typical of self-inflicted injuries those Dr Shepherd speak about are?

421. A. I think it is a bit difficult to put a degree on typicality, but they are consistent with -- very consistent, in my view.

422. Q. Can I take an example? Do you lecture on it to students?

423. A. Yes.

424. Q. Would those photographs with of assistance to you in those lectures?

425. A. They certainly would be.

426. LORD JUSTICE JUDGE: You are leaving us to guess at the reason why they might of be

of interest to students would be. Why might they be of interest to you when lecturing your students on the subject of self-inflicted injury?

427. A. One of the -- I think big problems, one of the big deficits in medical training generally is that the forensic legal and judicial implications of injury patterns are very badly, apart from some departments such as St Georges, taught, and junior doctors, for example, in an Accident and Emergency Departments are often faced with people who have not presented necessarily to the police, but gone straight to hospital because of injuries. Injuries are documented badly, incompletely and classified wrongly and, with respect to Dr Harris's reports, I think one of the problems that arises with the annotated notes here is that they are simply not detailed enough to take a view. We do not know what they are, so we lecture and teach on all aspects of wounds, how they are caused and what is a laceration, what are typical patterns of different types of injuries, so they are very relevant to teaching young students and doctors.

428. LORD JUSTICE JUDGE: Is there any particular feature of these photographs?

429. A. With these it is the -- there are a number of areas. They are within the area that the person can reach themselves. They are minor injuries. They are symmetrical, and they are ones that, in general terms, simply patterns that do not fit in with the history that has been given.

430. LORD JUSTICE JUDGE: Thank you.

431. Cross-examination by MR J DONNE

432. MR J DONNE: Just one point. Is it Mr Payne-James?

433. A. Yes, I am a surgeon. I am quite happy with Mr or doctor.

434. Q. Right. Why would Dr Harris have taken the internal and external anal swabs?

435. A. The -- in 1985 -- it is generally accepted that when undertaking an examination for sexual assault of any kind that one does accept that the person giving the account may not recall certainly, and in the early hours after alleged assault, may not be fully -- have given a full account of what has happened, so it is a routine practice to take a number of swabs, and anal swabs, internal and external, are used as standard parts of an examination procedure.

436. Q. So, can I just understand this? It is not simply a question of the possibility of postural drainage of semen to the anal area, but the swabs are taken from the anal area because, even though the complainant does not say there has been buggery, the doctor cannot preclude it, and it may be

necessary to get some evidence?

437. A. Different doctors take different views. The majority of people undertaking sexual assault examinations would take the widest proportion, or the widest number, of samples simply because that is the way in which the best documentation of evidence can be done. I cannot give you an explanation of why Dr Harris took those samples, but, having looked at all the other that she has done, the majority of samples are all -- she has taken a large range of samples, and I would guess that her approach would be to take all the samples that were possible to take.

438. Q. What I am trying to understand, it may be of assistance to the Court, is if, as appears to be the case, it is Dr Harris's duty to perform a fairly wide ranging examination, take a wide range of samples which does appear to be the practice of many forensic medical examiners, apart from simply taking an external and internal anal swab, would you have thought that Dr Harris would actually be looking at and conducting some sort of examination of the anal area?

439. A. Well, yes, and we know that she did because we have the diagram of her examination of the pair, which includes the anal region and the vaginal and vulva regions. So we have to make the assumption that she did. We know that she recorded some old findings in the vagina.

440. Q. And so even without a proctoscope and in the absence of a complaint, an experienced and trained police surgeon, forensic medical examiner, often conducting the sort of examination you are talking about, spasm of the anal sphincter would be apparent, would it?

441. A. Yes, it would. Do you mean in terms of whether the complainant had actually said on examination whilst being examined in the perineal region?

442. Q. I do not know about objective assessment. This complainant did not complain of buggery, but a few days later said, "I have in fact been in great discomfort and have been bleeding for three days because I have been bugged".

443. A. That would be apparent from the time of the assault. The pain and the bleeding is virtually instantaneous.

444. Q. And on an objective examination --

445. A. You mean by visual objective?

446. Q. Visual and experience, assessing the reaction of the patient who is being examined when asked her to raise her legs, all sorts of things. Would the fact that there was some trauma in the anal

area, would you have expected it to be apparent to the examining physician?

447. A. Well, I would not, and also have to take into account that part of an examination is not just examination and taking samples, but is taking a history, and that appears to be where there is no information on that at the time, so...

448. MR JUSTICE WRIGHT: Would it a standard question in the doctor's taking of the history?

449. A. Pretty much so. It is difficult to say 15 years ago, but my view is, yes, but not pretty much so. It should be.

450. MR J DONNE: Thank you.

451. MR A DONNE: Nothing further, my Lord.

452. LORD JUSTICE JUDGE: Thank you very much, Mr Payne-James. Thank you for coming, thank you for your report, and you are free to go.

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