



HIGH COURT OF JUSTICIARY

[2024] HCJ 4
IND2023-000261

JUDGMENT OF LORD MULHOLLAND
IN RESPECT OF AN EXAMINATION OF THE FACTS

in causa

HIS MAJESTY'S ADVOCATE

against

MICHAEL PORCHETTA

Accused

Crown: J McIlroy KC, AD; Crown Agent
Accused: G Allan KC, and L McQuade; PDSO Falkirk, Solicitors

29 November 2024

Introduction

[1] This is my judgment in respect of an examination of facts held at the High Court of Justiciary at Edinburgh between 18 November and 22 November 2024.

Procedural history

[2] Porchetta first appeared on petition at Livingston Sheriff Court on 11 May 2022. He was committed for further examination. Bail was sought, opposed and refused. He

appeared again on 19 May 2022 when he was fully committed. Bail was sought, opposed and refused. The case was indicted to a preliminary hearing of the High Court of Justiciary at Glasgow on 2 March 2024. Following concerns about his mental cognition, in terms of section 54 of the Criminal Procedure (Scotland) Act 1995 (the 1995 Act), a temporary compulsion order was made for him to be transferred to the State Hospital under conditions of special security.

Unfitness to plead

[3] A preliminary minute was lodged challenging Porchetta's fitness to plead. Five witnesses opined on Porchetta's fitness to plead. These were as follows:

1. Dr Johanna De Villiers, a Consultant Psychiatrist at the High Secure Intellectual Disability Service based at the State Hospital Carstairs (instructed by the Crown).
2. Dr Stuart Doig, a Consultant Forensic Psychiatrist based at the State Hospital Carstairs (instructed by the Crown).
3. Dr Chandima Perera, a Consultant Psychiatrist in Learning Disability (instructed by the defence).
4. Dr Gary MacPherson, a Consultant Forensic Clinical Psychologist (instructed by the Crown) and
5. Dr Ken MacMahon, a Chartered Consultant Clinical Psychologist (instructed by the defence).

All were agreed, as confirmed in reports authored by them, that Porchetta was by reason of a mental or physical condition, incapable of participating effectively in a trial (unfit to plead). Evidence was heard from Dr Johanna De Villiers and Dr Stuart Doig at a hearing

on 8 April 2024 at the High Court of Justiciary at Glasgow. Following consideration of the evidence and written reports, I held that on the balance of probabilities Porchetta was unfit to plead in terms of section 53F of the 1995 Act by reason of cognitive and learning impairment. This determination was made on an assessment of his intellectual functioning which met the criteria for a diagnostic learning disability. He has significantly impaired intellectual functioning as assessed on a structured cognitive assessment, namely the WAIS-IV UK test. His full scale IQ is assessed to be 67 (95% confidence interval 64-72). He has significant deficits in adaptive functioning. The cognitive impairments were evident before the age of 18. Delayed development was identified in the first year of life, with additional support required throughout his school year. He has a documented expressive and receptive language impairment. When this impairment was applied to a criminal trial, he did not understand the effect of making a plea. Although Porchetta has a rudimentary understanding of the purpose of the trial, he would be unable to meaningfully follow the course of the trial. He has a memory impairment which impacts on his ability to recall information over relatively short periods of time, as demonstrated both at interview and on assessment by Dr MacMahon, using the Wechsler Memory Scale. These impairments were evident during his school years, indicating that this is a long-term impairment. His communication and memory impairments would make it highly unlikely that he would be able to fully comprehend and follow the information presented during the trial. Due to the identified impairments, Porchetta would not be able to understand the evidence being led or the cross-examination of witnesses. The identified impairments limited his ability to meaningfully instruct his legal representatives. The set criteria to assess unfitness to plead in section 53F(2) were accordingly met. For the sake of completeness section 53F(2) states

that in determining whether a person is unfit for trial the court is to have regard to the ability of the person to:

- (i) understand the nature of the charge,
- (ii) understand the requirement to tender a plea to the charge and the effect of such a plea,
- (iii) understand the purpose of, and follow the course of, the trial,
- (iv) understand the evidence that may be given against the person, and
- (v) instruct and otherwise communicate with the person's legal representatives.

[4] Having discharged the trial diet, an Examination of the Facts (EOF) was fixed in terms of section 54(1)(b) of the 1995 Act which took place at the High Court of Justiciary at Edinburgh on 18 November to 22 November 2024. In terms of section 55(1) of the 1995 Act, at an EOF the court shall, on the basis of the evidence led, determine whether it is satisfied:

- (a) beyond reasonable doubt, as respects any charge on the indictment that he did the act constituting the offence; and
- (b) on the balance of probabilities, that there are no grounds for acquitting him.

An EOF is to be held along the lines of a trial as far as possible and therefore the rules on admissibility of evidence are the same as a trial (section 55(6) of the 1995 Act).

The charges

[5] The charges libelled against Porchetta are as follows:

“(001) on 7 May 2022 at 14 Learmonth Crescent, West Calder, West Lothian you MICHAEL PORCHETTA did assault Aimee Jane Cannon, then residing there, and did repeatedly punch her on the head and body and repeatedly strike her on the head and body with a knife or knives or similar instruments and you did murder her;

(002) on 7 May 2022 at 14 Learmonth Crescent, West Calder, West Lothian you MICHAEL PORCHETTA did steal pants and a mobile telephone belonging to the said Aimee Jane Cannon; and

(003) between 7 May 2022 and 9 May 2022, both dates inclusive, at 14 Learmonth Crescent, 52 Harburn Drive, both West Calder, West Lothian, Bathgate Road, Blackburn and elsewhere you MICHAEL PORCHETTA having committed the crime libelled in charge (001) hereof and being conscious of your guilt in respect thereof did;

- a. dispose of a knife or knives used in the commission of the crime libelled in charge (001) hereof;
- b. dispose of a mobile telephone belonging to the said Aimee Jane Cannon;
- c. dispose of house and car keys belonging to the said Aimee Jane Cannon;
- d. wash or wipe a pair of trainers in an attempt to remove blood thereon belonging to the said Aimee Jane Cannon;

and this you did to conceal and destroy evidence in respect of the crime libelled in charge (001) hereof, to avoid detection, arrest and prosecution in connection thereof and with intent to defeat the ends of justice and you did thus attempt to defeat the ends of justice.”

The evidence led by the Crown

[6] The following is a summary of the salient parts of the witnesses led by the Crown.

The deceased's false nails

[7] Terri Paxton was a friend of the deceased Aimee Cannon who lived at 14 Learmonth Crescent, West Calder. They are both mothers of young children. On Friday 6 May 2022 Terri Paxton visited Aimee Cannon to fix and manicure her nails. Aimee Cannon had three broken nails and Terri Paxton put false nails on her nails. She left her house at 9.45pm. Aimee Cannon left at the same time to source some cannabis and go for a drink. At the time Terri Paxton left her house, Aimee Cannon had no visible injuries on her.

The accused, the accused's behaviour and statements before and after the incident

[8] Robert Nicol is the uncle of the accused Michael Porchetta. After the death of Michael Porchetta's mother, Jacqueline who was Robert Nicol's sister, Michael Porchetta and his sister Gabriella went to live with him. Robert Nicol confirmed Michael Porchetta's learning disabilities and their manifestation in daily life. This included difficulties in understanding time which made accessing public transport on time very difficult for him. He confirmed that he had attended a special school. He needed support for daily life. He knew that he took drugs, cocaine and cannabis, as he told him. He borrowed money to buy drugs. He knew that he visited Aimee Cannon. On Friday 6 May 2022 he returned home from work in the evening. Neither Michael Porchetta nor Gabriella Porchetta were at home. He watched a bit of television then went to bed about 10.00 - 11.00pm. He wakened the next morning about 6.30am. Michael Porchetta returned home about 07.00am whilst he was making breakfast. It was not unusual for him to stay out all night. He was wearing a black top and black jeans. Robert Nicol asked him if he had a good night and Michael Porchetta said it was okay. He then went upstairs and got changed. He then left saying he was going to work with John, a relative who ran a car valeting business. He returned at the back of 5.00 - 6.00pm. A friend called Lucy Ann Smith came at the back of 10.00pm and went upstairs to Michael's room. Robert Nicol did not hear Lucy Ann leave. On the afternoon of Sunday 8 May 2022, Michael Porchetta told Robert Nicol that he heard someone had been murdered. He was upset. He said that his pals had told him that a lassie had been murdered up the street. He said that he had been up at the girl's house on Friday night. He said her name was Aimee. Robert Nicol asked him what he was doing there, and he said that he had been taking drugs. Michael Porchetta told him that his pals had told him

that the girl had been stabbed. He did not contact the police as he did not think that this information would be of help. His nephew continued to be upset for the rest of the day.

[9] On Saturday, Gabriella who was gathering dirty clothes for the washing, drew his attention to Michael Porchetta's black jeans which she thought were bloodstained. They had been left on Michael's bedroom floor. He challenged her stating that he thought the staining was some sort of cleaning fluid despite Gabriella, who was a trained nurse, stating that the staining smelled like blood. Robert Nicol was aware that there was blood on his decking which he attributed to Michael Porchetta's cut thumb.

[10] Gabriella Porchetta stated that she was a fully trained oncology nurse. On Friday 6 May 2022 she finished work at about 7.30pm and went to stay with her boyfriend. She returned home in the afternoon of the following day (Saturday 7 May 2022). She gathered the dirty clothing to put in the washing machine and noticed that her brother Michael's black jeans, which she lifted from his bedroom floor, were dirty. In particular, she noticed what she thought were bloodstaining on the front of both thighs and at the knee of one of the legs. The bloodstaining was the size of or bigger than a handprint. The staining smelt like blood which has a metallic smell due to the presence of iron. She knew what blood smelled like from nursing. She also noticed that his socks were bloodstained. There were small spots of blood on both socks. She talked to her uncle about this, and he mentioned that Michael Porchetta had a cut to one of his thumbs. She did not think this cut could account for the amount of blood on his jeans. She knew there was blood on the decking. She knew that he had self-harmed in the past and this was a concern for her. Her uncle did not think it was blood. She phoned her brother and asked him where the blood came from. He said that he had cut his thumb on some barbed wire when walking home. He sent her a photograph of the injury to his thumb, but due to her knowledge as a nurse she did not

think that this could account for the amount of blood she had seen on his jeans. She phoned him back and spoke to him, but he was adamant that the blood was from his thumb. After she learned that Aimee Cannon had been murdered she quizzed him further and he told her that he was at Aimee Cannon's house the night before taking drugs and that he left about midnight to get more drugs. She told him that he should tell the police this. He said he wanted his uncle there. She phoned the police. She knew that her uncle had washed his jeans and socks.

[11] Alastair Nicolson was a friend of Aimee Cannon. He had known her all her life. He knew that Michael Porchetta knew Aimee Cannon. She had told him that they were friends. On 7 May 2022, he heard that there had been an incident at Aimee Cannon's house. On 8 May 2022 he learned that Aimee Cannon had died. This led him to contact Michael Porchetta on Snapchat early on the Sunday and ask him if he knew what had happened to Aimee. Porchetta told him that he did not know what had happened but was sorry to hear that. He said that he was with Aimee till midnight (according to his statement it was 0003 hours or 0300 hours) on 7 May 2022. On the Saturday at 0340 hours Aimee had posted on Facebook photographs of her daughter. He saw these when he got up the following morning.

[12] Robert Aitken knew both Aimee Cannon and Michael Porchetta. His brother Darren knew Michael Porchetta. Aimee had told him in the past that Michael Porchetta had tried it on with her and that she had rejected him. She told him this a couple of months before her death. He had fallen out with Michael Porchetta previously. On Saturday 7 May 2022 he got a Facebook message from Michael Porchetta telling him that there were a lot of police in the street, Aimee's dad was there and he thought that something had happened to her. He replied at 19.46 hours asking "what's it like". He did not get a reply to this message. He

sent another message, a question mark, at 20.19 hours but did not get a reply. At 20.31 hours he received a Facebook audio call from Michael Porchetta who told him that the police were everywhere outside Aimee's house. He told him to go round and see what is going on.

Michael Porchetta then messaged him saying, "leaving now." On the Sunday Michael phoned him and told him that he had been at Aimee's house about half twelve. They were taking coke. Robert Aitken told him that he needed to tell the police this, but he said that his uncle had told him not to go to the police.

[13] Darren Aitken stated that he was good friends with Michael Porchetta. He knew that Michael Porchetta took cocaine. He owed him money which he had used to purchase drugs, although he said that it was for something else. He knew Aimee Cannon but not that well. On the Saturday morning, Michael Porchetta contacted him looking for money. He then said that Aimee's street was cordoned off. He told him that he had been at Aimee's on the Friday night. He said they were taking coke together. He asked Michael Porchetta if he had done anything with her and he said no. He said that she had asked him to leave around 00.30 hours. He phoned him on the Sunday at 14.20 hours and told him that when he left, she was fine. He asked Michael Porchetta whether anything had happened, and he said no and that a creepy guy had messaged her on Facebook, and she had then asked him to leave.

[14] Stephanie Mullen was a friend of Aimee Cannon. She said that she had spoken to her on Facebook at 04.09 hours on the Saturday morning about an electric scooter she might be interested in. She sent her a picture of the scooter. Stephanie replied, "are you for real" as she was looking for a quadbike, not a scooter.

[15] John Honeymoon stated that in March 2022 Aimee Cannon had asked him to come round to fix her car. He went to her house and identified that the battery was flat. Michael Porchetta was there, and Aimee Cannon asked John Honeymoon to get him to

leave. He asked him what he was doing as he was staring into space. He told him to leave which he did. After about 10 minutes he got a call from Aimee Cannon that Michael Porchetta had returned and was kicking her door. He attended at her house and found her alarmed and upset. Senior counsel objected to this evidence which I heard under reservation. The objection was on relevancy. I was satisfied that the evidence was relevant being evidence of an interaction between them months before her death whereby having been asked to leave, he shortly thereafter returned to her house and was kicking her door.

[16] On 31 May 2022 whilst on remand at Addiewell Prison, the accused Michael Porchetta during a telephone call said, "I can't, I can't remember what time I left at, I thought it was half twelve or that, but it was around twoish I left and then the murder happened at six, so six I don't know." (Joint Minute of Agreement (JMA) paragraph xxxiv). CP59 is an accurate transcript of the telephone call.

[17] Lucy Ann Smith was a former girlfriend of the accused. She dated him at school when they were 16 years of age. The relationship ended but they stayed in touch. She is now aged 27 years. She stated that on Saturday 7 May 2022 the accused contacted her when she was at Portobello beach. He said that he wanted to see her that night. She went to his house at 51 Harburn Drive, West Calder when she met him at the back door. His uncle and sister were in the house. They went to his bedroom and watched something on Netflix. She was there for a couple of hours. When she was with him, she noticed that he had an injury to his right thumb. He had a plaster on it. She asked him about the injury and he said he had done something the night before when he had been drinking. He made it clear that it was not something he had done deliberately (he had previously self-harmed). He was acting in an odd manner, not in the way he would normally act towards her. She also noticed a mark on his right wrist. He did not say anything about this mark. She knew that

he had taken cocaine in the past and she had concerns about the amount he was taking. He said that he had not touched the stuff (cocaine) for a couple of weeks and had been going to meetings. She told him that she was proud of him for getting help. When she learned of the death of Aimee Cannon, she messaged the accused about it as Aimee Cannon lived close to him. He replied with a sad face emoji that it was Aimee. She also stated that on two prior occasions he had asked her for money.

The locus

[18] The deceased Aimee Cannon lived at 14 Learmonth Crescent, West Calder. The house was a four bedroomed semi-detached house. The back door opened directly onto the kitchen. From the kitchen was a hallway which opened onto two bedrooms, the bathroom and living room on the ground floor. Two further bedrooms and a second bathroom were located on the upper floor. There were a set of sliding doors within bedroom one of the property. This appeared to be the bedroom occupied by Aimee Cannon. The key was broken into the front door lock and as such access could not be gained to the property from this door (CP7 at page 3).

The deceased Aimee Cannon

[19] Aimee Cannon was a 26 year old female, born 29 September 1995, who resided at 14 Learmonth Crescent, West Calder. She had two children, Laila age 6 and Lucas, age 2 with her former partner. Custody of the children was shared. The children were with their father at the time of the incident. Aimee Cannon was employed as a beautician and carried out her work from her home address at 14 Learmonth Crescent, West Calder. She was a recreational user of cannabis and cocaine. She was in social media contact with her

ex-boyfriend Dean Hamilton at 01.33 hours on Saturday 7 May 2022 over sourcing controlled drugs for her. She is survived by her parents, Wendy and Vincent Cannon and her two children.

The discovery of the body of the deceased Aimee Cannon

[20] The discovery of the deceased's body was covered by JMA [2] and at pages 3 - 4 of CP52, a report prepared by retired police officer DC Alan Bow and spoken to in evidence by him. About 19.00 hours Friday 6 May 2022 the now deceased's father, Vincent Cannon attended at the locus and spoke with the deceased. At that time her two children were staying, by arrangement, with their father Dean McAlear in the Inverkeithing area of Fife. At this time Vincent Cannon noted that his daughter was fit and well. Her friend, Terri Paxton was there doing the deceased's nails. Vincent Cannon stayed for a while before heading to the shops. On his return about 21.00 hours Terri Paxton was just driving away and Aimee Cannon was within her own vehicle, a red Renault Megane VRM SY61 VFV. She stated that she was going out for a "message". Vincent Cannon let himself into the property with his key to feed the dog and left for the evening. About 12.00 hours Saturday 7 May 2022 Vincent Cannon again attended the locus in order to walk the dog. He received no reply and tried both the front and back doors, which were secure. His key did not work in the front door and the back door was secure. He also tried to call her, but the call was not answered. He attended again about 18.15 hours. Still getting no reply he attended at the rear of the property and forced open the rear kitchen window and called for his daughter. He then tried the rear patio doors leading into his daughter's rear facing bedroom and found them to be insecure, albeit closed. Vincent Cannon then entered the property and after a short search of the ground floor he found the deceased lying on her back within the living

room with multiple injuries to her neck and a large amount of blood around her. She was fully clothed at this time, however she was without footwear. He also noticed foot impressions in blood on the floor around her body. He called an ambulance and commenced CPR, finding her cold to the touch. He also unlocked the rear kitchen door to allow the Paramedics entry. During his search he noted that his daughter's house keys and car key card were not in the internal lock of the front door where they would normally be if she was home. Her vehicle was present at the locus and parked within the cordon. At 18.37 hours on Saturday 7 May 2022, Police Scotland received a call from the Scottish Ambulance Service reporting that they were attending at the locus in relation to a 26 year old female who had been assaulted. It was reported that there was blood everywhere and footprints in the blood.

The post mortem

[21] On 9 May 2022 a post mortem examination of the body of Aimee Cannon took place at Edinburgh City Mortuary. This was conducted by Crown witnesses Robert Ainsworth and Kerryanne Shearer, both forensic pathologists. The findings of the pathologists are accurately recorded within CP1, a Post Mortem Examination Report dated 12 July 2022. The cause of death was established as having occurred as a result of Aimee Cannon having sustained multiple sharp force injuries. She was found to have sustained significant sharp force trauma with at least 45 clearly identifiable stab wounds and multiple incised wounds on her scalp and both hands. More than 30 stab wounds were to her neck and throat area. Her right internal jugular vein had been almost completely transected. Fourteen stab wounds were identified on her chest and abdomen. These wounds were all compatible with having been inflicted by a sharp implement such as a knife with a single sharp edge with a

minimal blade length of about 11cm. The incised wounds were compatible with “defensive type” wounds sustained as she attempted to deflect blows with a sharp implement (JMA [1] paragraph 1).

Toxicology

[22] Three samples of blood and one sample of urine were taken from the deceased Aimee Cannon during the post mortem examination. These were subject to toxicological analysis by Peter David Maskell and Hazel Jennifer Torrance, both Forensic Toxicologists, for the presence of drugs and alcohol. The findings are contained within CP2, Joint Forensic Toxicology Report, dated 31 May 2022. Cocaine and its metabolites were recovered from the deceased’s blood sample.

The accused’s injuries

[23] CP78 is a report of an examination of the accused Michael Porchetta undertaken by Dr Michael Kaim at Livingston Police Station at 14.10 hours on the 10 May 2022. A full external body examination revealed the following findings:

(a) **Head:**

1. A vertically placed abrasion measuring 1.7cm by 0.1cm, lying on the left cheek. The lower end was placed at the level of the mouth and 2cm to the left of it.

(b) **Torso:**

2. A vertically placed linear abrasion measuring 1.5cm in length, lying on the right side of the back 5cm to the back of the right midaxillary line and 2cm above the lower edge of the rib cage.

3. A very faint yellow bruise measuring 4cm x 2.5cm, lying on the left side of the back 13cm below acromion (top of the shoulder) and 13cm from the posterior midline.

(c) **Right upper limb:**

4. A group of two short, linear abrasions, lying obliquely (low laterally) on the postero-medial aspect of the forearm 10cm from the wrist. They measured 0.8cm and 0.5cm in length.
5. Two parallel, superficial incised wounds lying horizontally over the ulnar edge of the thumb 1cm distally from the web of the thumb, 5cm from the tip of the thumb. They were 0.5cm in length. The distance between them was 0.1cm.
6. An incised wound measuring 0.5cm in length, lying obliquely (low towards radial side) on the palmar surface of the index finger 1.5cm from the tip of the finger.
7. An incised wound measuring 0.5cm in length, lying horizontally on the 5th finger 1.5cm distally and laterally (onto the ulnar edge) from the metacarpophalangeal joint (knuckle at the base of the finger), 7cm from the fingertip.
8. An obliquely placed incised wound measuring 0.5cm in length, lying 1cm distally from injury "7" and onto the dorsal side.

(e) **Left upper limb:**

9. A group of five very superficial incised wounds scattered over the palmar surface of the proximal phalanx of the second finger lying

between 6cm to 4cm from the fingertip. They measured maximally 0.2cm in length.

10. A superficial abrasion measuring 0.3cm x 0.2cm, lying over the prominence of thenar 4cm from the wrist and 4cm of the web of the thumb.
11. A deeper incised wound, covered with a scab measuring 1.5cm in length, lying horizontally over the ulnar side of the thumb 2cm of the tip of the thumb. This was a deep incised wound created as a result of the skin surface with a sharp edge of an implement such as a knife or piece of glass resulting in a clean cut.
12. A superficial incised wound measuring 0.3cm in length, lying vertically over the dorsal surface of the finger, over the proximal interphalangeal joint 5cm from the fingertip.
13. A superficial incised wound measuring 0.2cm in length, lying over the radial surface of the finger, over the proximal interphalangeal joint 4cm from the fingertip.

(f) **Left lower limb:**

14. A vertically placed linear abrasion measuring 1.5cm in length, starting from the upper edge of the kneecap and extending upwards.
15. A faint yellow bruise measuring 2.5cm x 2.5cm, lying on the antero-lateral aspect of the lower leg 4cm below and laterally from the kneecap.
16. A minor abrasion measuring 0.2cm x 0.2cm, lying on the anterior aspect of the lower leg 2cm below the kneecap.

17. A brown bruise measuring 2cm x 2cm, lying on the antero-lateral aspect of the lower leg 6cm below the kneecap.

Dr Kaim gave evidence. He stated that all incised wounds to his right hand (wounds 5, 6, 7, and 8) and left hand (wounds 9, 11, 12 and 13) could have been caused by a sharp instrument such as a knife or broken piece of glass. The injuries noted were consistent with having been caused in the early hours of the Saturday morning on 7 May 2022. He stated that these wounds could have been caused by a frenzied attack with a knife whilst the assailant was holding a knife. He also accepted, somewhat reluctantly, that the incised wounds could have been caused by coming into contact with barbed wire. Such causation would depend on the nature of the barbed wire, if it was razor shaped, for example. He had seen a high number of injuries over 17 years, but he had never seen injuries such as these which had been caused by barbed wire.

The forensic science evidence - control samples and reports

[24] The DNA control samples from the deceased Aimee Cannon (CL66 from blood) and the accused (CL63) were agreed at paragraphs v and vi of JMA [1]. Various forensic science reports were agreed in the JMA [1] at paragraphs vii to xi. These reports are as follows:

- vii. CP3 is a report prepared by Laura Wilcock, Forensic Scientist, dated 31 May 2022 which contains details of her examination of the locus at 14 Learmonth Crescent, West Calder in relation to the recovery of photographs of footwear marks in blood.
- viii. CP4 is a report prepared by Laura Wilcock and Richard Vallance, both Forensic Scientists, dated 19 July 2022 which contains details of the analysis of the

footwear marks in blood recovered from 14 Learmonth Terrace and referred to in CP3. The footwear marks in blood are shown in CPs 68, 69, 70, 71 and 72.

- ix. CP7 is a report prepared by Kirsty Evaline McTurk, Forensic Scientist, dated 16 September 2022 which contains details of the forensic examination of various blood lifts which had been photographed and are shown in CL1 gallery 4. The report contains a summary of the results of DNA analysis. The full DNA examination results are contained in CP12.
- x. CP10 is a report prepared by Mark Heron, Alan Thomson and Jason Wark, Scene Examiners dated 3 and 10 October 2022 which contains details of the photographic images recorded in CL1 galleries 1, 4 and 10 and details of photographs taken of CP4 and CP5 (false nails), CP15, CP16, CP17, CP18, CP19, CP20, CP24, CP25, CP26, CP27, CP28, CP29, CP30, CP31, CP32, CP33, CP34, CP35, CP36, CP59 and CP61 (blood lifts) and CP68, CP69, CP70, CP71, and CP72 (scaled images of footwear marks).
- xi. CP12 is a forensic biology report dated 7 and 9 December 2022 prepared by Emily Jane Service and Juliet Amanda Riches, both Forensic Scientists.

Footprints in blood at the locus

[25] Following the discovery of the body of Aimee Cannon on 7 May 2022 at 14 Learmonth Crescent, West Calder, the Forensic Scientist Laura Wilcock attended at the locus. On entering the living room there were two single leather chairs on the left behind the door. A two seater leather sofa was situated under the window on the left and another two seater fabric sofa was situated on the right of the room. A pool of blood was noted on the floor in front of the two seater leather sofa. A number of partial, overlapping

footwear marks in blood were noted, orientated in all directions, on the floor within the living room. All of the footwear marks were noted to be similar in pattern to each other. These led out into the hallway and bedroom one. There was also a bloody footwear mark of the front facing of the leather sofa in the living room. This was photographed to scale and chemically treated. There were also a number of footwear marks in blood noted on the hallway floor near the front door, in the hallway at the door to the living room and on the floor in bedroom one. These were also chemically treated and photographed to scale. An additional footwear mark in blood was identified on the floor in bedroom one. This was also chemically treated and photographed to scale. All these bloodied footprints (13 in total) were compared with the accused's Adidas training shoes which had been seized from him by DC Stuart Robertson and DC Alan Bow at Livingston Police Station on 9 May 2022 (JMA [1] paragraph xxii). Following comparison, the Forensic Scientist Laura Wilcock confirmed that the accused's training shoes were responsible for all the bloodied footprints. In addition, it was noted that there was a piece of material adhering to the sole of the right training shoe which the scientist determined was a unique feature. This feature presented in a number of the footprints in blood adding to the Forensic Scientist's confidence that the accused's training shoes had made the footprints in the deceased's blood.

Deceased's DNA on the accused's training shoes

[26] DNA attributable to the deceased Aimee Jane Cannon was recovered from the outer aspect of the upper heel of CL38 and from the mid outer aspect, near to the lace on CL39 (JMA [1] paragraph xxii). The forensic scientist was of the opinion that there had been an attempt at cleaning the training shoes, although she accepted that other explanations were possible.

The deceased's fingernails

[27] Paramedics initially attended at the locus as first responders. They found the deceased lying with her head on top of the toys lying to the right of the leather two seater sofa. In order to carry out their assessment, the paramedics pulled the body down slightly so that she was lying flat on the living room floor. Following a scenes of crime examination by forensic scientists, it was noted that the deceased was missing three false fingernails. Two (CL4 and CL5) were found in the hallway, one of which was found next to a pendant near blood. On examination of the two fingernails by forensic scientists, DNA attributable to the deceased Aimee Cannon was found on both nails. The accused's DNA was also found on the underside of CL4, one of the false fingernails.

Contact bloodstain in the form of a palm impression

[28] A contact bloodstain in the form of a palm impression was found on the right arm of the settee in the living room of 14 Learmonth Crescent, West Calder, West Lothian near to where the body of the deceased was found. This was photographed and compared with the accused's palm impressions and was found to match (JMA [1] paragraphs xxviii and xxvix).

The deceased's mobile phone

[29] CL57 is a pink iPhone belonging to the deceased and was recovered from a bin at Boulder Path Garden, Beechwood Road, Blackburn, West Lothian on 10 May 2022 by George Hamilton, a street cleaning officer. This iPhone was thereafter handed in to the Blackburn Partnership Centre, West Lothian and seized from witness Kerri Kiloh by

DC Stuart Robertson and DS Graham Grant. The SIM card inside the said iPhone was examined by forensic scientists. DNA attributable to the deceased Aimee Cannon was recovered from the SIM card leading to a reasonable inference which I was prepared to draw that the iPhone belonged to the deceased. It was accepted by the senior counsel for the accused that it did. The iPhone was further examined by forensic scientists and DNA attributable to the accused was found in bloodstaining around the buttons on the side of the phone, the top edge of the phone and in the groove at the bottom edge of the phone (JMA [1] paragraphs xxvi and xxvii).

The deceased's underwear (bra and pants)

[30] CL48 is a pair of grey ladies' pants, labelled "Secret Possessions, size 12/14" seized from within a Scotmid carrier bag within the accused's outdoor bin at 52 Harburn Drive, West Calder by Graham McIlwraith and Louisa Botha on 11 May 2022. The accused lives at 51 Harburn Drive, West Calder. A small section of material from within the crotch was analysed by forensic scientists. DNA attributable to the deceased Aimee Cannon was recovered from this section leading to the reasonable inference that the pants belonged to Aimee Cannon. On further examination, DNA attributable to the accused was also recovered from this section. In the forensic scientist's opinion, this could be explained if Aimee Cannon's DNA and the accused's DNA had been present on the inside of the crotch of these pants. Fingerprints of the accused were identified on the outer surface of the Scotmid carrier bag within which the pants were found (JMA [1] paragraph xxiii).

[31] A further pair of pants (CL54) with white cellular like staining on the inside of the crotch was found within a Scotmid carrier bag in an outdoor bin at 52 Harburn Drive, West Calder by Graham McIlwraith and Louisa Botha on 11 May 2022. A small section

of fabric from within the crotch area, including the cellular like staining was analysed by forensic scientists. DNA attributable to the deceased Aimee Jane Cannon was recovered from the sampled fabric leading to the reasonable inference that the pants belonged to Aimee Cannon. Fingerprints of the accused were identified on the outer surface of the Scotmid carrier bag within which the pants were found (JMA [1] paragraph xxiv).

[32] CL59, a bloodstained green bra worn by the deceased Aimee Cannon on 8 May 2022 at 14 Learmonth Crescent, West Calder, West Lothian, was examined by forensic scientists. DNA attributable to the accused was recovered from the inside of the right cup of the bra (JMA [1] paragraph xxv). Semen was not found.

Overall conclusion of the forensic scientist following DNA examination

[33] Emily Service, an authorised forensic scientist, gave evidence in respect of her forensic science report, CP12. In her opinion, the scientific findings could be explained if the accused Michael Porchetta had been involved in an altercation with Aimee Cannon, at 14 Learmonth Crescent, West Calder during which Aimee Cannon and Michael Porchetta were both injured and bleeding, Aimee Cannon's wet blood was transferred to Michael Porchetta's trainers and Michael Porchetta's wet blood was transferred to Aimee Cannon's pink iPhone, which was subsequently found in a bin in Blackburn. However, other explanations were possible. Further, her scientific findings do not assist in addressing which knife, or similar object, may have been used to injure Aimee Cannon or why pants, which could have been worn by Aimee Cannon, were within a "Scotmid" carrier bag, in a wheelie bin, outside Michael Porchetta's home address.

Withdrawal of money by the accused from the deceased's bank account

[34] All the CCTV and photographic images (CL1), 16 galleries of images and CCTV visual recordings, were agreed by JMA [1] at paragraph iv a - m. A CCTV compilation disc (CL67) was prepared and agreed by JMA [1] at paragraph xxi. This CCTV compilation disc includes footage of the accused attending at an ATM cashpoint situated at Scotmid, 22 Main Street, West Calder at 02.09 hours on the morning of 7 May 2022 and withdrawing money from the bank account of the deceased. CP16 is the transaction schedule relating to this cash withdrawal. The amount of cash withdrawn was £10 (JMA [1] paragraphs xxi and xxii). CP52 is a report prepared by DC Alan Bow on 15 December 2022 based on the viewing of CL67, the CCTV compilation disc.

Blood lifts from the locus

[35] Forensic scientists examined the locus and identified photographed blood droplets, spots and smears principally in the living room, hallway and bathroom. These were predominately the deceased's blood (CL20 from the bathroom; CL22, CL23, CL24, CL25, CL26, CL27, CL28, CL29 from the hallway; CL32, CL33, CL34, CL35 and CL36 from the living room). However, there were a number of blood lifts which on examination by forensic scientists were confirmed to be the accused's blood. These are as follows:

1. CL15, a blood lift taken from within bedroom number 1 at the locus (JMA [1] paragraph xiv).
2. CL16, CL17, CL18 and CL19 are blood lifts taken from within the bathroom and a bedroom at the locus (JMA [1] paragraph xv).
3. CL21 is a blood lift taken from the hallway at the locus (JMA [1] paragraph xvii).

4. CL30 and CL31 are blood lifts taken from the living room at the locus (JMA [1] paragraph xix).

Kirsty McTurk gave evidence on the examination of the various blood lifts which is detailed in CP7, her report. She explained that some of the blood lifts involved secondary spatter. She explained the mechanical principles of blood, namely that a smeared bloodstain can be produced when there is moving contact between two surfaces and at least one of the surfaces is bloodstained. Drips of blood can be produced when blood drips passively from an open wound or from an item sufficiently wet with blood. When blood drips into wet blood or onto a solid surface, this can generate secondary spatter of small bloodspots which can be transferred onto nearby items and surfaces. Spots of blood can be produced when a source of blood has broken up and travelled through the air as airborne drops before landing on nearby surfaces. Small and very small spots of blood are more typically formed when a force has broken up and dispersed the blood e.g. impact spatter when an object strikes a surface wet with blood. Contact bloodstaining can be produced when there is direct contact with a source of wet blood. Cast-off blood spots can be produced when blood is projected from an object due to a change in velocity or direction of the object movement.

[36] She found many very small and small spots of blood on the toys and items on the floor on both the far right and left sides of the room at either side of the fireplace in the living room. In her opinion, the pattern of spots in these areas of the living room would have been created as a result of impact into a source of Aimee Cannon's wet blood. Further contact bloodstaining, some of which was smeared was also found on the items in these areas. There was heavy contact bloodstaining on the toy box sitting on the hearth of the fireplace, some of this was smeared. Large contact swipes of blood and further bloodstained footwear impressions from two sources of footwear were found on the lower facing edge

of the sofa at the window in the living room. A contact bloodstain in the form a palmar impression was found on the arm of the sofa. As confirmed above the palmar impression was attributed to the accused. A pair of bloodstained ladies Nike Air Max trainers (CL8 and CL9) were found on the right side of the living room. On examination by forensic scientists, DNA attributable to the deceased Aimee Cannon was found within the heel and upper front of both trainers and within a bloodstain on the right upper heel (JMA [1] paragraph xiii). It was a reasonable inference, which I drew, that these trainers belonged to the deceased Aimee Cannon.

[37] Many very small and small spots of blood were found on the front door, the window above the front door and the wall adjacent to the front door in the hallway. This blood was attributed to the deceased Aimee Cannon. Further, very small and small spots of blood were found on the right-hand hall wall, radiator and floor in this area of the hall. In the opinion of the scientist, the pattern of spots in this area of the hall could also have been created as a result of impact into wet blood. Linear cast-off blood spots were found on the right-hand hall wall adjacent to the front door, on the right-hand hall wall under the mirror and left-hand hall wall at the stair cupboard door. In the opinion of the scientist, the pattern of blood spots in these areas could be explained by an object sufficiently wet with Aimee Cannon's wet blood having been swung in the hallway at the front door and between the front door and the living room door. Further contact bloodstains, which were smeared were found on the hall side of the living room door.

[38] Heavy drips of blood were found on the floor at the entrance, at the cabinet with the laundry basket. The drips of blood at the entrance were disrupted and smeared. Three of the drips were the accused's blood. Contact bloodstaining from the deceased Aimee Cannon was found on the front of the toilet seat and toilet. There were also a few

dilute bloodstains on the floor adjacent to the bath and sink attributable to both the deceased Aimee Cannon and the accused. The stains were mixed with a liquid such as water as if an attempt at cleaning had been carried out. Dilute bloodstaining can be produced when the bloodstaining has been diluted with water, either before or after deposition.

[39] The forensic scientist concluded at page 8 of her report that in her opinion, the presence of the impact patterns in blood within the living room at both the right and left sides of the fireplace and the corresponding DNA results could be explained by Aimee Cannon having been struck within these areas of the living room. Further, the presence of the impact patterns in blood at the front door area of the hallway and the area of the hallway between the front door and the living room, the linear cast-off blood spots within the same areas of the hallway and the corresponding DNA results could be explained by Aimee Cannon having been struck within these areas of the hallway. Further, the presence of the drips of blood on the floor of the living room, bedroom one and bathroom and the directional spot of blood on the door surround at bedroom one together with the corresponding DNA results could be explained if Michael Porchetta had been within these areas whilst injured, bleeding and dripping blood onto the floor. The presence of the accused's palmar impression in blood on the right arm of the sofa at the window, and the corresponding DNA results could be explained if Michael Porchetta had touched this area of the sofa whilst his hands were wet with a source of Aimee Cannon's wet blood. The presence of dilute bloodstaining on the bathroom floor adjacent to the bath and the corresponding DNA results could be explained by a diluted mixture of Aimee Cannon's and Michael Porchetta's wet blood having been deposited onto this area of the bathroom floor.

[40] She also confirmed that blood can be smelled depending on the amount of blood, the environment in which it persists and the experience of the person who is exposed to the

smell. Blood contains iron and a metallic smell can be emitted depending on the quantity and environment.

[41] She also confirmed that there were no drips of the accused's blood found outside the locus including the pathways to the front and back doors, or the front and back doors and there was no trail of the accused's blood leading to or from the locus. She did not comment on the accused's statement that he had cut his thumb on barbed wire on the way home when it was put to her for comment.

Other CCTV evidence

[42] DC Alan Bow conducted a trawl of CCTV. His findings are contained in his report, CP52. The CCTV footage is contained in a compilation disc, CL67 and is referred to JMA [1] at paragraph xxxiii. The relevant clips were played to the court during the evidence of Alan Bow. The relevant clips and what they showed are as follows:

Friday - 6 May 2022

2301 hours. A male assessed to be the accused Michael Porchetta is caught on CCTV footage walking from the junction of The Glebe and Harburn Road, past 22 Grant Street heading in the direction of the deceased's home address at 14 Learmonth Crescent. He appears to be using a mobile phone at this time. He is wearing Adidas training shoes. CP52 map 1 (at page 5) shows these locations.

2358 hours. The deceased drives her Red Renault Megane motor vehicle into the Shell Lizzie Bryce Petrol Station, Livingston from the direction of the Lizzie Bryce Roundabout and parks up at a pump. The accused Porchetta is seen to leave said vehicle's front passenger seat and approach the night pay. The deceased exits the

driver's door and fuels the vehicle. The accused gets back into car and the deceased drives off back towards the roundabout and out of sight.

Saturday 7 May 2024

0209 hours. A male assessed to be the accused is seen arriving at the ATM at Scotmid, 22 Main Street, West Calder from the direction of Learmonth Crescent. He uses the ATM and walks off towards the general direction of Learmonth Crescent.

He is wearing Adidas training shoes (JMA [1] paragraphs xxii and xxxi - xxxiii).

0557 hours. A figure comes into view from behind the locus. The figure walks along the drive at the side of the locus and turns right out of view in the direction of Grant Street. The figure is carrying what appears to be a large white bag. This figure is assessed to be the accused Michael Porchetta (ties in with footage from 22 Grant Street). He is seen at the front of the locus heading in direction of his home address.

0559 hours. A male assessed to be the accused Michael Porchetta walks past 22 Grant Street from the direction of the locus carrying a weighted white carrier bag. He walks across Harburn Road and into the alley that leads to Harburn Drive and the area of his home address. He is wearing similar clothing to that worn at the Lizzie Bryce Petrol Station, namely Adidas training shoes and dark jeans. He is carrying a white carrier bag with contents therein.

0651 hours. A male assessed to be the accused Michael Porchetta walks from the direction of Parkhead Crescent and past 22 Grant Street back towards the locus. He is not carrying anything.

0653 hours. A figure comes into view from the east of the locus at 14 Learmonth Crescent. The figure walks towards the front door of the locus. The door does not

open, and the figure walks along the drive at the side of the locus and out of view behind the locus. This is assessed to be the accused Michael Porchetta and ties in with footage from 22 Grant Street.

0705 hours. A male assessed to be the accused Michael Porchetta walks past 22 Grant Street heading in the general direction of his home address. He is wearing black skinny jeans and Adidas trainers.

0735 hours. A male positively identified as the accused Michael Porchetta enters West Calder Post Office and purchases a bottle of water then leaves and stands outside at the bus stop. At this time he is wearing a Hi-Vis orange vest and red beany hat. He is lost to sight after he exits the shop premises.

0747 hours. A figure comes into view from the east side of Learmonth Gardens. The figure stands on the roadway outside the locus for a short time and then approaches the driveway at the side of the locus. The figure appears to be wearing an orange coloured hi-vis vest and carrying a dark coloured rucksack. The figure stops at the entrance to the driveway and appears to take the rucksack off his back and bend down. The figure then walks along the driveway and out of view behind the locus. This is assessed to be the accused Michael Porchetta standing at the left-hand side of the house at the driveway.

0757 hours. The figure in the hi-vis vest comes into view from behind the locus. The figure appears to be carrying a white coloured carrier type bag. The figure walks along the driveway and stops at the entrance to the driveway and bends down. The figure then walks out of view to the east. This is assessed to be Michael Porchetta.

0759 hours. A figure walks from east to west along the pavement on the opposite side of the road from the front of Arnold Clark towards the direction of the Post Office. They appear to be wearing an orange coloured hi-vis vest, dark coloured bottoms, carrying a dark coloured rucksack and a white coloured carrier type bag. This is assessed to be Michael Porchetta.

0814 hours. A male positively identified as the accused Michael Porchetta gets on Lothian Bus 276 from outside West Calder Post Office. At this time Porchetta is wearing an orange coloured hi-vis vest (with a logo MPS), and dark coloured bottoms. Porchetta is now carrying an Asda carrier bag which appears to be full.

0836 hours. A male positively identified as the accused Michael Porchetta gets on a bus at The Centre, Livingston.

0904 hours. A male positively identified as the accused Michael Porchetta gets off the bus at Blackburn Cross and is seen to cross the road heading in the direction of Bathgate Road, Blackburn. Porchetta is now wearing shorts having changed his clothing whilst on the bus. Porchetta is still carrying both bags.

0911 hours. A person assessed to be the accused Michael Porchetta is seen walking along Bathgate Road opposite the Happy Valley Hotel heading in the general direction of Pollock Transport. He appears to be carrying two bags, one of which is an ASDA bag. It should be noted that the deceased's mobile telephone was recovered from within a council bin in a recess at the side of Bathgate Road, Blackburn between the Happy Valley Hotel and his place of employment, Pollock Transport (shown in CP52 Map 3). This is referred to in JMA [1] at paragraph xxvi.

Having viewed the CCTV footage myself (*Gubinas v HMA* 2018 JC 45), I was satisfied that the identifications of the accused were all accurate and reliable.

The indictment

[43] Before closing the prosecution case, the advocate depute deleted paragraphs a and c of charge 3 (relating to the disposal of the weapon(s) used and the deceased's car keys). The advocate depute then closed his case.

The defence case

[44] No evidence was led for the defence.

The no case to answer submission made at the conclusion of the evidence

[45] A no case to answer submission was made at the close of the evidence. This submission was related to charge 2 (theft of the deceased's pants and mobile phone). It was averred that there was insufficient evidence of theft as there was no evidence of theft as distinct from disposal of the items. I repelled the submission holding that there was sufficient evidence to prove that these items belonged to the deceased and that they had been disposed of in bins. In these circumstances, it was a legitimate inference to draw that their disposal in bins was permanent and intended to deprive the owner of her property.

Closing submissions

[46] The Crown and defence made closing submissions. The following is a summary of these submissions.

Closing submissions for the Crown

[47] The advocate depute submitted that given the nature of the weapon's used, knives, the multiplicity of blows (over 45) the location of the blows, head, neck and body and the resulting injuries, that it could properly be described as a murderous attack. The evidence could draw an inference of intentional murder, or at the very least wicked recklessness. The evidence led in charges 2 and 3 would bear the inference of theft (charge 2) and attempting to defeat the ends of justice (charge 3). With regard to charge 1, there was already a strong case without the forensic science evidence. The deceased had her nails manicured with false nails on the Friday night. She was then seen at the Lizzie Bryce Petrol Station, Livingston with the accused at 23.58 hours. At 01.33 hours on Saturday morning, she is messaging Dean Hamilton. A video of her children was posted at 03.40 hours and she sent a message to Stephanie Mullen about an offer to sell her a scooter about 04.09 hours. This evidence suggests that she was alive at this time. The accused returns home at about 7.00am with a bleeding injury to this thumb and according to his sister his jeans worn by him when he returned home were heavily bloodstained and his socks were also bloodstained with small spots of blood on both socks. Her uncle washed the jeans and socks. She had good reason to think it was blood due to the metallic smell and her training as a nurse. At 02.09 hours at an ATM in West Calder, close to the locus, the accused withdraws £10 from the deceased's bank account. He then walks off towards the locus. He is then seen at 05.57 hours near to the locus carrying a large white bag. At 05.57 hours he is seen back at the locus going up to the front door before walking off in the direction of his house. At 06.51 he is then seen back at the locus at the front door. This time he is not carrying anything. He then returns home, changes his clothing, and is next seen at the Post Office at 07.35 hours. He then travels by bus to his work and upon leaving the bus,

having changed his clothing again, he walks to work which would take him past a bin where the deceased's mobile phone was found. His DNA and blood are on the phone which further strengthens the inference that he had dumped the phone in the bin. Later that night his former girlfriend, Lucy Smith saw him and asked him about his injury to his thumb and he said that he did something when drinking the night before. She described his demeanour as odd when he was telling her this. He told her that he was off cocaine having not taken it for a couple of weeks and was getting help for his cocaine habit. This was a lie on top of other lies he had told as to the cause of his injury to his thumb, and when he left the deceased's house. He was back and forward to the deceased's house in possession of bags, he had been at the deceased's house at least four times and had changed his clothing when he arrived home at 7.00am. The clothing he had changed out of was bloodstained, if his sister's evidence was accepted. The deceased's pants were found in his bin and her phone was found in a bin en route to his work. His DNA was found on a pair of these pants and on the mobile phone. He had been told to leave the deceased's house two months before her death and he had returned 10 minutes later kicking the door. There was also evidence from the witness Honeyman that the accused had previously come on to her, but she had said no. With regard to his prison call (CL70), he stated that the murder had happened around 6.00am. He was seen walking from the locus at around 6.00am. What he said in the call could therefore be personal knowledge.

[48] When the scientific evidence is added to this evidence, the case against the accused becomes even stronger. His Adidas shoes have made a number of footprints in the deceased's blood at the locus, his palm print is found in the deceased's blood on a settee at the locus next to where the body of the deceased was found. Two of her broken nails were found in the hallway, one of which had the accused's DNA on the underside of the nail.

The deceased's DNA was found on his training shoes. The accused's DNA was found on the deceased's phone. His DNA was found on the inside of the right cup of the deceased's bra worn by her at the time of the assault on her and her death. His DNA was found on the inside crotch of a pair of the deceased's pants which was recovered inside a Scotmid carrier bag in his bin. There was another pair of the deceased's pants found in the Scotmid bag inside the bin. The accused's fingerprint was found on the Scotmid bag. All this evidence was powerful in itself, but in combination with the circumstantial evidence listed above, led to an inevitable inference that the accused did the acts constituting the offences. In addition, on the balance of probabilities, that there were no grounds for acquitting him.

Closing submissions for the defence

[49] Senior counsel for the accused submitted that he was not the counsel originally instructed and that the lines of cross-examination were taken following difficulties in taking instructions from the accused given his cognitive impairment. He had had discussions with the advocate depute over leading the accused's interview with the police, but it had not been led by the Crown. Given the accused's cognitive impairment, despite his solicitor being present during the interview, it would be inappropriate for the Crown to rely on this and the advocate depute has not sought to rely on it. With regard to the various statements made by the accused which had been led in evidence, the accused's cognitive impairment should reduce the weight to be attached to them, particularly in relation to the accused's statements about time. Evidence had been led that one of the manifestations of his impairment was the difficulties he had with time, and keeping to times where time was of the essence such as catching a bus at a particular time. Given the court's decision on unfitness to plead, it would be difficult for the accused to give evidence. He was unfit to be exposed to the rigours of the

witness box. That said, alternative explanations which are possible may undermine a skilled witness' view on interpretation.

[50] He accepted that there was no basis for part b of section 55(1) of the 1995 Act, namely that on the balance of probabilities, there are no grounds for acquitting him. There had been a substantial JMA [1] in this case. The factual findings set out in JMA [1] were not disputed. However, the defence challenged the Crown's interpretation of the factual findings particularly the blood distribution, the medial evidence of the accused's injury, the palm print evidence, the bloodied footprints and the deposition of the accused and deceased's DNA. He accepted that the interpretations could be incriminating. But the expert witnesses accepted that other exculpatory explanations were possible. The absence of evidence of mixings of the deceased and accused's blood, as cast off blood, were significant, particularly where a frenzied attack involving the use of a knife would be bound to cast off blood and if the accused was bleeding at the time also, it would be expected that there would be more findings of blood mix. This was an oddity. Even if there was evidence of mixed blood, this does not mean that the accused was the assailant in a frenzied attack.

[51] He accepted that in view of the number of injuries, their location and the weapons used, that this could only be murder.

[52] Albeit the accused's injuries could have been received at the time of the deceased's death, this was not significant as there was no reliable evidence of what precise time the deceased was attacked and died. Nor did the bloodied footprints which matched the accused's Adidas footwear bear an inference that they were caused as a result of an attack on the deceased. All they can tell you is that they must have been deposited after she was bleeding. The same applied to the accused's palm print in blood on the settee. They could have been made if the accused came upon the scene after the event when checking on the

deceased. This was a possibility according to the scientist and was supported by the inverted footprint on the front of the sofa. This hypothesis could also explain the blood on the accused's jeans.

[53] There were a number of unanswered questions such as the stray DNA, was it the DNA of another unidentified individual or individuals or was it just random stray pieces of DNA. The clasp of bloodstained hair found in the deceased's hand sent to the Aberdeen Laboratory was also an unanswered question. No evidence was led of the results of any such examination. The clasp of hair was not blonde and was long. It did not fit the deceased's hair which was blonde or the accused's hair which was short. This was shown in the CCTV footage at the Lizzie Bryce garage. This was an important piece of evidence which was unanswered. An answer could be determinative or at least heavily influential. The absence of an answer should not be ignored. How the accused got his injuries is another unanswered question. The Crown's hypothesis would require the accused to change hands whilst wielding the knife. That was unlikely. An alternative explanation which is possible is contact with barbed wire. The repeated CCTV sightings of the accused at the locus (four) were odd as they did not show the accused going into the house. There is no evidence of what was in the bags. It is unknown whether the deceased's pants were taken at the time of the attack on the deceased. The finding of the accused's DNA on the inside of the right cup of the deceased's bra could be consistent with the accused administering CPR. If all the unanswered questions were added up, there are too many of them to be confident in holding the acts set out in the charges established. Finally, the evidence of the accused's statement from prison should not be treated as a special knowledge statement as there is no other evidence of the deceased's time of death and it is known that the accused has difficulty with time precision. He submitted that for the reasons

he set out in his submissions, that I should not hold that the accused did the acts constituting the offences.

Decision

[54] It is self-evident that there is no requirement for proof that the prosecution provide answers to every question in a case. If that was so, very few convictions would result. Nor is it the case that evidence looked at in isolation should be more consistent with guilt than with innocence before it can be used to corroborate. It is often the case that a piece of evidence can, when interpreted, be both incriminatory and exculpatory. This can apply when the piece of evidence is looked at in isolation or in combination with other pieces of evidence. The interpretation of a piece of evidence is a matter for the fact finder. Just because something is possible does not mean that it is probable. A possibility can be remote or unlikely or probable or likely or very likely or even close to or certain. This may depend on the piece of evidence when viewed in combination with other evidence. This is why jury's are directed in writing at the start of a case that:

“Circumstantial evidence is simply evidence about various facts and circumstances relating to the crime alleged or to the accused which, when they are taken together, may connect the accused with its commission. On the other hand, it may point the other way.

In considering circumstantial evidence, please bear in mind that:

- each piece of circumstantial evidence may be spoken to by a single witness;
- a piece of circumstantial evidence need not be obviously incriminating in itself and it may be open to more than one interpretation; and
- you can choose an interpretation which supports the Crown case or one which undermines it, so long as it is a reasonable interpretation.

Where circumstantial evidence is based on accurate observation, it can be powerful in its effect. Individually each fact may establish very little but in combination they may justify the conclusion that the accused committed the crime charged. When you come to decide on your verdict you should consider all of the evidence.

It is for you to decide what weight - what importance - you give to a piece of evidence. Ultimately, you will have to consider what conclusions you can draw from the evidence and, in particular, whether you are satisfied beyond reasonable doubt that the crime you are considering was committed and that the accused committed it."

[55] Given that this is a circumstantial case, my approach therefore is to look at all the evidence in combination with other evidence that I accept and then decide what inference, if any, it bears. There was very little challenge to the evidence that I have set out in detail above. The challenge has been to what interpretation, if any, it bears, what reasonable interpretation should be drawn by me.

[56] Having set out the evidence in detail, I will now summarise what I consider to be the evidence against the accused Michael Porchetta. It is as follows:

1. Michael Porchetta knew the deceased Aimee Cannon and was friends with her.
2. He had been at her house on a number of occasions and they had taken drugs together.
3. He had tried it on with her and she had rebuffed his advances.
4. On another occasion, about 2 months before her death, he had been told to leave her house by another male friend. Having left, the accused returned about 10 minutes later and was kicking her door.
5. The accused was in the deceased's house on the night before she died. He was the last known person to be with her before she died. They were in a motor vehicle together at a petrol station in Livingston at 23.58 hours.
6. The accused withdrew money from the deceased's bank account at Scotmid ATM, 22 Main Street, West Calder at 02.09 hours.

7. The deceased made social media postings and messages after midnight, the last one around 04.09 hours.
8. Her body was found the next day by her father in the living room of her house at around 18.00 hours.
9. The accused was seen at her house on four occasions between the last known time she was alive (using social media) and the discovery of her body. On three of these occasions, he was seen carrying large white bags and a rucksack.
10. After being at the deceased's house, he returned home and has an injury to his right thumb. This injury could have been caused by the movement of a knife being held by him when stabbing.
11. His jeans, worn by him at the time he is seen at the deceased's house, were quite heavily bloodstained at both thighs. I accepted the evidence of the accused's sister Gabriella in this regard. She is a trained nurse used to dealing with blood and described it as having a metallic smell. Blood of course contains iron.
12. The accused's socks were also bloodstained. There were small spots of blood on both socks.
13. The accused's Adidas training shoes worn by him whilst at the deceased's house had the deceased's DNA on them. The forensic scientist was of the opinion that there could have been an attempt at cleaning the training shoes.
14. Two pairs of the deceased's pants were found in the accused's bin in a carrier bag with the accused's fingerprints on it. The accused and deceased's DNA were found on the inside gusset of one of the pairs of pants.
15. The accused's DNA was found inside the right cup of the deceased's bra which was worn by her when lying dead on the living room floor.

16. The deceased's mobile phone was found in a bin en route to the accused's work. He was seen walking in the direction of the bin a short time after he was seen at the deceased's house and must have passed it en route to work. It is a reasonable inference that I was prepared to draw that the accused deposited it there.
17. The deceased's phone had the accused's DNA on it.
18. The accused stated in a call from prison that the murder had happened around 6.00am. He was seen walking from the locus at around this time. I did not regard this as a special knowledge statement as the time of the attack has not been definitively proved.
19. A palm print in the deceased blood was found on a settee close to where the deceased's body was found. The palm print was the accused's.
20. Two of the deceased's broken nails were found in the hallway. The nails had been manicured on the Friday night. The DNA of the accused was found on the underside of one of the broken nails.
21. Multiple footprints of the accused in the deceased's blood were found at the locus.
22. The accused provided inconsistent accounts of his movements. He told his uncle that he had been up at the deceased's house on the Friday night. He told his sister that he had cut his thumb on some barbed wire when walking home and that he was at the deceased's house taking drugs the night before. He told Alastair Nicolson that he was with the deceased till midnight the night before. He told Robert Aitken that he had been to the deceased's house till about 12.30pm. They were taking coke. He told Darren Aitken that he had been at the deceased's house taking coke and that she had asked him to leave at around 12.30pm after a

creepy guy had messaged her on Facebook. That she was fine when he left. Whilst on remand and in a call from the prison he said he could not remember what time he left the deceased's house, he thought it was at 12.30pm but it was around twoish and then the murder happened at six. His former girlfriend Lucy Smith saw him on the Saturday night and asked him about the injury to his right thumb. He said that he had done something the night before when he had been drinking. He was acting in an odd manner. He told her that he had not taken coke in two weeks which was patently untrue.

23. In none of these statements did he say that he had found the dead body of the deceased and tried to administer CPR.

24. There was no evidence that he contacted the emergency services to report the finding of the dead body of the deceased. He did not report this to the various people that he spoke to including his uncle, sister and friends.

Putting all this evidence together, it is an inescapable inference that I drew that the accused Michael Porchetta did the acts set out in charge one and murdered the deceased. I also drew the inferences that the accused committed the acts set out in charges 2 and 3.

[57] With regard to the scenario that the accused discovered the deceased badly injured or dead in her home, various concessions were made that such a scenario could explain some of the scientific evidence such as the bloodied footprints and palm print. The injury to the accused's thumb having been caused by barbed wire was another concession extracted from Dr Kaim, although he was sceptical that this was a realistic possibility. However, there was no evidence whatsoever to support such a hypothesis and the accused did not mention this at all to the various people he spoke to in the aftermath of the incident. If this had happened, in support of the lines of cross-examination, then he would surely have called for

help, he would have told his friends and family and he would have made himself available to the police at an early stage to assist. This can all be said despite his impaired cognition. It would not explain the broken fingernail in the hall with the DNA of the accused on its underside. Nor would it explain the two pairs of the deceased's pants in his bin with his DNA on the inside crotch of one pair. Nor would it explain the disposal of the deceased's mobile phone which could have contained evidence helpful to the police. Nor could it account for the accused repeatedly returning to the locus in possession of bags. None of this evidence fits with the lines of cross-examination. The hypothesis put to these witnesses is not realistic and is unsupported and does not in any way leave me with a reasonable doubt that the accused murdered the deceased.

[58] This was a vicious, frenzied attack on a defenceless woman in her own home carried out by the accused whom she regarded as her friend. Having murdered Aimee Cannon, he then tried to cover his tracks by disposing of her underwear and mobile phone and attempting to clean his bloodstained trainers. Unfortunately for him, this did not work. The evidence told its own story and was the deceased's voice from the grave. It was clearly murder having regard to the weapon(s) used, the multitude of blows, the location of the injuries and the nature of the injuries.

Findings made

[59] For the foregoing reasons, I hold beyond reasonable doubt that Michael Porchetta did the following acts as libelled in the indictment and on the balance of probabilities, there are no grounds for acquitting him:

“(001) on 7 May 2022 at 14 Learmonth Crescent, West Calder, West Lothian you MICHAEL PORCHETTA did assault Aimee Jane Cannon, then residing there, and did repeatedly punch her on the head and body and repeatedly strike her on the

head and body with a knife or knives or similar instruments and you did murder her;

(002) on 7 May 2022 at 14 Learmonth Crescent, West Calder, West Lothian you MICHAEL PORCHETTA did steal pants and a mobile telephone belonging to the said Aimee Jane Cannon; and

(003) between 7 May 2022 and 9 May 2022, both dates inclusive, at 14 Learmonth Crescent, 52 Harburn Drive, both West Calder, West Lothian, Bathgate Road, Blackburn and elsewhere you MICHAEL PORCHETTA having committed the crime libelled in charge (001) hereof and being conscious of your guilt in respect thereof did;

- a. deleted;
- b. dispose of a mobile telephone belonging to the said Aimee Jane Cannon;
- c. deleted;
- d. wash or wipe a pair of trainers in an attempt to remove blood thereon belonging to the said Aimee Jane Cannon;

and this you did to conceal and destroy evidence in respect of the crime libelled in charge (001) hereof, to avoid detection, arrest and prosecution in connection thereof and with intent to defeat the ends of justice and you did thus attempt to defeat the ends of justice.”

Disposal

[60] I will continue the case for two psychiatric reports and a report from a mental health officer. In the meantime, the accused will continue to be detained at the State Hospital on the temporary compulsion order under conditions of special security.