The Case of David Ferguson

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Introduction

The murder of Susan Kent was all at once brutal, senseless and without a credible motive. The body of this outgoing, 33 year old, mother of two children was found late on the afternoon of 24th November 1999 by her mother in law Mrs Iris Kent. Because Susan hadn't arrived to pick up her daughter from school as she normally did, Mrs Kent had been called to collect her granddaughter that afternoon. Mrs Kent discovered Susan's body in her upstairs bedroom at her home in Birch Grove, Gillingham in Kent. She was laid facedown on the bed; her hands were bound behind her back by a pair of handcuffs. Her throat had been cut and she had been stabbed seven times in the chest.

Susan married John Kent in 1987 and they had 2 children, Julian and Jessica born in 1989 and 1992 respectively. They moved into number 26 Birch Grove in March 1990. Susan did some part-time child minding and worked as a dinner lady at the nearby Hempstead Junior School, also attended by her daughter. She had been divorced from John, but he kept in contact with the children.

That morning she had arranged to meet a former boyfriend, Stephen Bittlestone, at the nearby Hempstead Valley shopping centre just after 9am and their movements were comprehensively captured on CCTV. The last known sighting of her was logged at 10:42am as she left the shopping centre to drive the half mile or so home. It was because of the fact that she hadn't turned in for work that morning that a number of calls were made to her home. All of these, unsurprisingly, went unanswered. Although no time of death was given in court, it was assumed that Susan had died sometime before midday; she was due to start work at 11:30am.

The police immediately made an appeal for anyone who knew Susan to come forward to aid their investigation. One such person was David Ferguson. After being informed of the police appeal by his family he called the police and arranged to speak to them.

David lived in his own property in Chatham and at that time had a lodger, Paul Smith. David had originally moved into Port Rise with a former girlfriend but was now single. He had known Susan Kent well enough to have spent some time with her socializing and also when she would visit his home. David insists that the relationship was purely platonic and that he had never visited her house. In fact, until just a few months before her death, he said that he didn't even know where she lived.

David was, at that time, 30 years old and worked as a hand bookbinder in Ashford. Among his interests were mountain biking and karate; in which he held a black belt and had had his own gym, where he was an instructor. It was also no secret, among his regular coterie, that David enjoyed pornography and BDSM sexual practices. A week or so before Susan's death he had had a telephone line installed and immediately signed up for a dial up internet connection with AOL. Many people experienced the internet for the first time by using a CD-Rom from one of the many ISP's who offered the service this way, such as Freeserve.

David had never been in trouble with the police before and the judge at his trial reminded the jury that David had been of *previous good character*. After having given a number of statements to police he was arrested on 12th December 1999. The police had obviously found a great deal of pornographic material in his house. DS Bolton, on arresting David, said "*due to my knowledge of the murder of Susan Kent and what I have found in your house I am arresting you on suspicion of the murder of Susan Kent on 24th November 1999."* David, when cautioned and asked if he understood said this; "*Yes, I do, but let's be honest why would I have come forward first? Surely if I had done it all I would have to do is get rid of it."* David was refused bail and held on remand at Elmley jail on the Isle of Sheppey until his trial in October 2000.

The trial was held at Maidstone Crown Court and was presided over by Mr Justice Hidden. From the outset it became obvious that the judge was unwell and during his summing up may have suffered a stroke. Much of the case against David

consisted of what can only be described as a character assassination based upon his sexual habits and propensities. David was found guilty of the murder of Susan Kent by a unanimous verdict and was sentenced to life imprisonment, with a minimum tariff of 20 years.

Two years after his conviction, following a Freedom of Information submission, David received over 500 pages of documents, 300 of which related to the forensic evidence in his case. From these papers it soon became apparent that the Crown had withheld vital evidence that now shows that not only is David's conviction unsafe but that he is completely innocent of this dreadful crime.

The Police Custody Log

During a person's arrest, the police keep a detailed custody log. In the one kept whilst David was held in custody and withheld by the police, there is a crucial, if not sensational, entry at 3:10pm on 15th December 1999, 3 days after his initial arrest. It says *"I have given authority to take a non-intimate sample, namely a footprint from DP (detained person) as I believe it will tend to confirm or disprove his involvement in this offence"* This was authorized and signed by the CIO Detective Superintendent McCann. The footprint that was found at the scene of the crime was obviously not made by David and its existence was, unsurprisingly, not acknowledged in court.

The ramification of this discovery is fundamental to the fact that the conviction of David Ferguson is unsafe. Quite clearly Superintendent McCann knew that his officers and the forensic scientists had not produced any evidence whatsoever to link David to Susan's murder. Yet despite this, five days later David was charged with Susan's murder.

David's Alibi

David's defence was one of alibi and he relied, in the main, on the movements that day of his father Ronald. David said that he had had little recollection of that day because he was taking strong painkillers for a painful kidney complaint, which resulted in him passing blood and other material when urinating. He recalled leaving the house after his father called and then going into Chatham where he had to bank a cheque and get a repeat prescription. He then went to Gillingham where he was first captured on CCTV at 12:36pm. He was last seen on CCTV leaving Gillingham at

14:44pm. During the time he spent in Gillingham that afternoon he went, first, to a bike shop, where he ordered a saddle for his mountain bike, and then to a tattoo parlour. This was all confirmed by witnesses called by the prosecution. David returned home a short time after this where he was greeted by his lodger Mr Smith and friend Mr Archenoul. Both remember David holding a white chemist bag.

The Crown asserted that David took a particular route out of Gillingham that afternoon to dispose of some of Susan's clothing and the murder weapon. The Crown said that David had gotten rid of the items in some bushes in the area of the junction of Mill Road and Prince Arthur Road. This would be one of a number of unfounded allegations that the Crown made with nothing recovered by the police to back it up.

The issue of when David left the house that day hinges entirely on the time his father arrived. Ronald had an appointment at the Railside garage in Gillingham for 10am but had overslept that morning and was 15 minutes late. He left there 20 to 25 minutes later. He said that the owner didn't have one of the parts needed and that he had advised Ronald to go to the Mo-Tunes spares shop, also in Gillingham. Ronald said that he had to wait there for about 15 minutes, behind a woman with a child, before being served, leaving some time after 11am. He says that he arrived at David's house just after 11:15am and they then left together around 11:45am, albeit in separate vehicles. He said that he then went to the chemist and was home just before midday for lunch.

The police claimed that Ronald's recollections of that day were wrong. Although his father had said that he had collected a prescription from Palmers Pharmacy in Chatham just before midday, the police used evidence of the chemist shop's old computer's clock timing to try to disprove this. The police said that he had in fact collected his prescription at 11:05am, *after* leaving David's house. The pharmacy's old computer, replaced because of fears concerning the millennium bug, was, when switched on, found to be around 45 minutes fast. The database record of the prescription was date stamped to 11:51am. The issue of whether or not the computer's time was wrong and had been noticed by the staff when it was in general operation was not discussed at the trial.

What was not disclosed to the court was the fact that the police had indeed visited the Railside garage and taken a statement from the owner, Mr David Pointer.

In January 2001, Mr Pointer made a statement to David's solicitor that corroborated Ronald's version of events in every way.

What is important to understand here is that it is beyond the realms of possibility to suggest that the police didn't visit each and every one of the places that David and his father said that they went to that day. After all, every one of the persons from every one of the places David went to in Gillingham that afternoon was called to give evidence at the trial. The police must have taken statements from the people at Mo-Tunes and the chemist shop from which David got his prescription. It is quite clear that those interviewed must have fully corroborated the pair's movements and timings, which contradicted the police's own evidence, and that is why the police withheld these statements from the defence. When one factors in these events it becomes quite clear that it was just not possible for Ronald to have got to Palmers pharmacy at 11:05am; he would be still waiting to be served in the Mo-Tunes spares shop, about 2 miles away.

At trial, the police presented, what appeared to be, a fully comprehensive set of timed stills from CCTV cameras that covered Susan's movements at the shopping centre in the morning and David's movements in Gillingham that afternoon. Yet the police said that the routes taken by David and his father that morning were, conveniently, either not covered by CCTV or that the cameras were not working. The matter of whether some routes didn't have CCTV, at that time, is still subject to some debate.

To further demonstrate the police's complicity in deliberate non-disclosure, it was while David was being held for questioning after his arrest, that his sister Julia clearly remembers taking the prescription drugs, that he got that day, to the police station for him. David never received them. Without any shadow of a doubt the medicines would have had the dispensing chemists details on them along with *the exact date that they were dispensed***.**

Susan Kent's Social Life

A fair proportion of the trial evidence focussed on David's sexual proclivities. Yet Susan Kent was painted as a woman who, although both attractive and outgoing did not exhibit any signs of someone who could be described, in any way, as a *loose*

woman. This is perhaps, in retrospect, the area of non-disclosure that should prove to be the most sensational.

Fiona Ashdown a work colleague of Susan Kent said that *although she went out clubbing wearing short skirts and trendy clothes she wasn't tarty or slept around. The only real boyfriend she had after her divorce was Stephen Bittlestone, for about 6 months.* Stephen Bittlestone concurred with this view when he described Susan thus; *there was nothing unusual about her sexual preferences whilst they were together. She always dressed appropriately when going out dancing.*

Several documents, from the police's own Operation Latvia files, were later disclosed to me that shed a completely different light on Susan's personal life. Among these were anonymous calls to the police claiming to know that Susan like to be tied up during sex and others which, although telling the same story, could only be described as hearsay. Yet that could not be said of two other witnesses.

Although the defence had obviously seen Lorna Reeve's statement they did not cross-examine her on certain aspects of it. Her original statement contained details of Susan's social life and liking for nightclubbing. She said that Susan always dressed in extremely revealing clothing and danced with lots of men during the *slow numbers.* Whilst still married, Susan was seeing a prison officer who lived on The Isle of Sheppey and, on one occasion she had had casual sex with a friend of Mrs Reeve's then boyfriend. The last time Mrs Reeve saw Susan was in the summer of 1998. She said that Susan had told her that she was getting fed up with Steve Bittlestone and had arranged a blind date with a man named Gary.

Susan's former hairdresser Klaire Gregory fully corroborates Mrs Reeve's picture of Susan's social life and reveals aspects of it which should have been the main focus of the police's investigations. Her statement was withheld; the reason given by the police, behind the scenes, was that; *the defence could suggest that, if this was a true reflection of the victims [sic] life, then she may have unwittingly invited the murderer into her home and consented to being handcuffed.*

Ms Gregory knew Susan very well for about 3 years between 1993 and 1996 when Susan was still married to John. Susan would confide in her about the different men that she had met. Ms Gregory thought that Susan could confide in her because she was separate from all other aspects of her life.

The essence of Ms Gregory's statement boiled down to the following facts. Even whilst married, Susan would go out socializing whilst her husband stayed in, babysitting. She would invariably change into fancy and provocative clothing, at either a friend's house or at the salon where Ms Gregory worked, and then go out nightclubbing, so that her husband would not find out. This went on for the entire 3 years that Ms Gregory worked at that salon but they then lost contact for a couple of years.

Ms Gregory bumped into Susan 3 weeks before her death, at the Hempstead Valley shopping centre. Susan confided in her that she still liked *squaddie* types and that she had been seeing a man named Peter for the last 7 weeks. She was loaning him her car and was thinking of lending him money to buy his own car. Because he worked away she could only see him once a week or at weekends. Ms Gregory got the distinct impression that *Pete* was in another relationship and that Susan was being taken for a ride by this man.

Susan divulged further information about her sexual activities. She said that she liked to be tied up during sex and had done this with other men; not her husband though, who she described as being boring in this regard. Ms Gregory said that she felt that Susan was quite domineering towards men and would not worry about hurting a man's feelings when ending a relationship.

The DNA Evidence

The only piece of evidence adduced by the Crown that could have placed David at the scene of the crime was a DNA profile. This profile emanated from combined samples taken from the external anal and vaginal areas of Susan's body; which were individually marked by Dr Rouse as DAR/6 and DAR/8. Raymond Chapman of the FSS (Forensic Science Service) informed the court that, astonishingly, each of the samples contained just one sperm head each. The alleles (the distinguishing bands in DNA testing) that were attributed to Susan were subtracted and all but one of the remaining eleven (of the twenty in total) matched David's profile.

Mr Chapman added weight to the provenance of this profile by claiming that the chances of the DNA belonging to someone other than David were one billion to one against. This is called the RMP (random match probability) and it's routine for the

FSS to ascribe this ratio, even if the profile is not a full one. When Mr Chapman was pressed to determine the tissue source of the DNA, he said that it was most likely to be from semen, although he could not be entirely positive. If it wasn't from semen then he said that it could be from saliva. According to Mr Chapman, semen could persist in the vagina for up to seven days and still be detectible. Yet, strangely, there was no presence of sperm heads in samples that had been taken from the internal swabs of Susan's intimate areas. These swabs also had no DNA that could be attributed to David.

Swabs taken from the handcuffs were tested for DNA and although there were a few alleles that could be attributable to both Susan and David, there were others that were attributable to neither Susan nor David. Although Mr Chapman placed a random match probability on this profile belonging to someone other than David as one in four, it is entirely possible that an unknown person could be the contributor of all of the alleles not attributed to Susan.

Apart from some discussion concerning the transfer and persistence of DNA that was the extent of the scientific evidence in the whole case. In fact, of the 225 pages of the judges summing up, only 17 were taken up by the evidence of Mr Chapman and the pathologist, Dr Rouse.

But what had actually happened in the forensic work performed in David's case? The two samples, DAR/6 & 8 were combined and then separated into 2 fractions, to separate the sperm content (pellet fraction) from everything else (epithelial fraction). This separation of samples into two fractions is a standard practice, especially in cases where there is any suspicion of a sexual assault. The DNA evidence relied on by the Crown at trial had been from the pellet fraction of DAR/6 & 8 tested on 20th December 1999.

Shamefully, the Crown withheld from the defence the fact that both fractions of the DAR/6 & 8 sample had already been tested for DNA on 29th November 1999. The results of these original tests had not provided any significant evidence to incriminate David, *as the police well knew*. Numbers of the magnitude of one billion to one clearly make quite an impression on juries; yet, because the results of the original 29th November tests were withheld by the Crown, David was therefore, quite obviously, denied a fair trial.

Furthermore, the second test on the pellet fraction from DAR/6 & 8 was performed 8 days after David's arrest; when the police had already taken DNA samples from him in the shape of a buccal (cheek) swab and a hair sample. Quite astonishingly the buccal swab had been taken home by DC Philip Causer, secreted in his jacket pocket. Even though this had been disclosed at trial it was still contrary to all prescribed protocols for the safeguarding of the integrity of DNA samples.

Other DNA tests were performed but not adduced at trial. A cigarette butt was discovered under Susan's bed but no DNA whatsoever was found. David has never smoked and as far as anyone knows neither had Susan. The various bloodstains on the carpet contained components that could be attributable to both Susan's ex-husband and her son but not David. The footprint that was found was clearly not David's either. In fact the crime scene yielded not one fingermark, not one hair or one fibre that could be linked to David.

Copies of non-disclosed fax messages sent by Chapman to Kent police state, quite explicitly, on 17th December 1999, that the sample in question was to be subjected to both SGM and LCN (low copy number) testing. This is highly significant, as the profiles from the two separate tests on the pellet fraction, 29th November and 20th December, are different.

Technically speaking, SGM (second generation multiplex) testing is a world-wide validated system that gives reliable, reproducible results between repeated tests on the same sample if the quantitation of DNA is in the prescribed range. On the other hand, LCN has never been validated to prove that same level of reliability as it was developed for use on samples that were too small for regular STR (short tandem repeats) testing. In fact the use of LCN is restricted to very few countries. The major problem with LCN testing is that the profiles it produces are invariably subject to what are known as stochastic effects; random errors that occur during the PCR (polymerase chain reaction) process.

In this case, the FSS (Forensic Science Service) consistently denied that LCN was ever used. Yet in 2010, Jonathan Shaw MP wrote to the FSS to enquire about the forensic work on David's behalf. He received a reply from Mr Ian Kirkwood, the Head of Policy and Criminal Justice Requirements. Mr Kirkwood said "*The intimate swabs were examined for semen on 25th November 1999. The case file record shows*

they were submitted for routine SGMplus testing on the 26th November 1999…In fact, as far as the Reporting Scientist in this case can recall, no LCN test has ever been carried out in this case. No LCN paperwork can be found in the case files."

Mr Kirkwood's reply clearly undermines the Crown's case at trial through his own admission that the tests performed on 20th December were not the first carried out on this sample. His categorical denial of the use of LCN also begs the question; why are the two tests so distinctly different if SGM+, the system that produces reliable, reproducible results, was used? The defence had to rely on Mr Chapman's two statements, dated 21st December 1999 and 3rd March 2000, on which to employ an expert of their own to rebut this evidence. How could this be done equitably when the statements disclosed by Mr Chapman deliberately excluded tests that had been performed previously?

It is now quite obvious that the non-disclosure of the original tests on both fractions from the DAR/6 & 8 sample have completely hobbled David's defence. There are a number of questions that his defence team could have asked but were unable to. Why, when SGM+ testing had already been carried out, did the police and FSS feel the need to retest the same samples using the same testing protocol? Were they expecting to find something different? Also, it is significant that alleles almost fully attributable to David should now be found, after the FSS were already in receipt of actual DNA samples from David collected some eight days earlier.

Moreover, in 2004, David's then solicitors, Dobson Hillman, sought the advice of Professor Sir Alec Jeffreys, the inventor of DNA fingerprinting. Among other questions, he was asked about the ability to elicit DNA profiles from such small amounts of sperm heads. Sir Alec's reply was "*that swab is most unlikely to have contributed sufficient sperm DNA for analysis.*" It must be appreciated though, that this was just an opinion on Sir Alec's part; he had not been party to any actual data in the case. Yet if Sir Alec is correct then Mr Chapman is wrong about the tissue source of the DNA. If the tissue source is not semen but saliva, or another cell source for that matter, then one would have expected the DNA from those cells to have contributed to the profile from the DAR/6 & 8 epithelial fraction, from 29th November, but they clearly have not; at least they are not reliably callable due to the marked stutter that that profile exhibits.

The following year, in 2001, at the trial of Roy Whiting, Mr Chapman's views, on possibly contaminated items coming into his laboratory, were the subject of some debate. Here, in this case, he has made fundamental errors concerning the origin of the hair sample taken from David. He was continually confused between it being from either David's head or chest. He was wrong on both counts; it was in fact from his arm! The work of a scientist should be shown to be exact in every way but his sloppy approach is further demonstrated by the numerous errors in the dates recorded in his reports.

The CAT Boots

A number of very small blood spots were found on a pair of CAT boots owned by David. The blood was undoubtedly Susan's and Chapman said that the blood would have been deposited on them by first hitting a hard surface and then spattering onto the boots. David explained that during that summer, Susan had been at his house one morning when she cut her finger whilst preparing food in the kitchen. Blood went onto a work surface, the fridge and the floor. The boots were usually kept by the kitchen door nearby. David's friend John Archenoul remembers seeing the blood that day, after Susan had left.

It is plainly evident that the blood on the boots had nothing whatsoever to do with Susan's death; the floor of Susan's bedroom was carpeted. The blood spots couldn't have been made by firstly having hit a soft surface such as carpet.

David's Computer Internet Use

The Crown had made much capital from the computer evidence given by Mr Crute and Dr Barrett. Their claims had made the headlines in the local press and on the BBC website. In essence, they claimed that David had used the internet to visit extreme BDSM fetish websites; that he had sent emails of a violent nature to several women; researched how to clean up after a murder and that he had posted a message on one site outlining his intent to kill. Yet Mr Crute said; *that the data of web pages viewed could be stored on the computer but could be overwritten over time. If it has been deleted it could still be recovered as long as it hasn't been overwritten.* In all honesty, Mr Crute had found nothing to suggest that the web pages recovered had even been read by David.

Dr Barrett, apart from giving a resume of David's internet activity compared to the phone bill items, said that only fragments of data between 23rd and 25th November existed and could be recovered. He explained the process of *churning;* whereby files from internet activity that have been stored are marked as deleted and can therefore be overwritten. This happens between a minimum of 1 minute and up to a maximum of two weeks. This period could be configured but David's computer setting for file deletion was at the default of two weeks. He informed the court that *if a computer is used extensively files would be deleted within minutes, or otherwise days.*

The actual files that comprise the web pages that have been visited are stored in a folder called Temporary Internet Files. These are the ones that are subject to *churning*. The addresses, and the last access date, of the visited pages themselves are stored in a separate folder called History. Strangely, Dr Barrett did not produce the contents of the History folder from David's computer. These entries are not subject to churning, but can be cleared anytime by the user.

David's full telephone bill was withheld from the defence and it is not surprising why this was. Not only was the internet used extensively after the date of Susan's murder but for a further five days beyond what would have been the two week default date to commence *churning* of old files from the date of Susan's death. In fact, during those five days (8th to 12th December 1999) David was connected to the internet for an astonishing 28 hours, 1 minute and 46 seconds. It is hard to imagine, considering the amount of *churning* taking place, that the Crown's findings are anything more than supposition.

The Murder Weapon

The police maintained throughout that the knife used to kill Susan had never been found. They even went as far as to enter as exhibits at the trial two knives which they themselves had bought from two different shops! Several witnesses were called to say that David had owned various knives but, as David himself said, he would have found his job difficult unless he possessed a decent knife.

Yet in the list of non-disclosed exhibits was an item labelled MJP/15. This was described as a knife. The very same exhibit was also recorded as being accepted into Mr Chapman's laboratory in his statement of 3rd March 2000. Mr Chapman's report makes no mention of this item having been subjected to any form of forensic testing.

A short extract from a police report describes the knife as being damp when found; the blade of which fitted the description of the murder weapon given by the pathologist, Dr Rouse. The statement of the police officer, who found the knife, Martin Pope, is also being withheld by the police.

Handcuffs

Two friends of Susan's, Lorna Reeve and Beverley Beresford, gave evidence for the defence at trial to the effect that they had seen handcuffs in Susan's house. Mrs Reeve asked Susan about the handcuffs; *I said what are they for kinky sex. I said I didn't think you were like that Sue. She then put them away.* Mrs Reeve's husband Jason corroborated his wife's statement. John Kent also mentioned seeing handcuffs at Birch Grove in a statement that he made to the police.

The police once again went out shopping and bought a pair of handcuffs, although these were different from the pair used to bind Susan's hands. Witnesses were called who said that they had seen handcuffs at David's house, during a Halloween party in 1998. A set of handcuffs had also been brought to one of David's friend's stag night several months later.

A small key was found on a fob in David's car. This key not only opened the cuffs from the murder scene but also the pair bought by the police! The forensic expert who examined the crime scene cuffs said that they were not a matched pair with David's key due to the lock marks being entirely different. In all honesty all this proved was that some keys can actually open many dissimilar sets of handcuffs and that handcuff ownership was not at all uncommon.

The Red Car

Mr Brian Warner was a neighbour of Susan's, living opposite her house in Birch Grove. He knew her to talk to but he didn't know the exact number of her house, except that she parked her small blue car on her driveway.

That morning he had been out shopping and returned between 10:45am and 11am. Susan's car was there but he was almost 100 percent sure that parked behind it was a small, dirty, light red hatchback type car. He glimpsed it for a few seconds before returning home where he stayed indoors for the rest of the day.

David owned a red Ford XR2 but the Crown had to accept that it was not roadworthy at that time and that he was in fact driving his white Renault 21. This was used by his mountain bike team and was quite distinctive due to it being adorned with various team decals.

David's Conviction is Unsafe

The defence, judge and jury were completely ignorant, *inter alia*, of the following vital facts;

- The police custody log entry implying that they had no evidence against David but evidence of some other unknown person.
- The damning DNA samples had been previously tested without significant traces of alleles attributable to David.
- A damp knife had been found at the crime scene despite claims that the murder weapon had not been found.
- David's full telephone bill showing the extensive internet usage, right up to the day of his arrest.
- Crucial alibi witness statements had been taken, including Mr Pointer, who substantiates Ronald Ferguson's account in every way
- The true nature of Susan Kent's sexual likings and her extra-marital affairs.

It is certainly a fact that the judge, Mr Justice Hidden, was clearly unwell throughout the trial. On a number of occasions, the day's business was cut short because of it. His summing up was marred by his speech being slurred and it's thought that he had, at this juncture, suffered a stroke. He subsequently became confused over points of the evidence, often losing track and repeating himself. It could well be argued that the jury had been confused by the judge's muddled instructions.

It also has to be said that David's brief and instructing solicitor performed remarkably poorly. If ignoring David's instructions, regarding the direction of the questioning of witnesses, wasn't bad enough, it is fairly plain to see that they were not very keen on actually trying to substantiate David's alibi by doing anything in the way of leg work and actually visiting the various *loci in quo*.

The Court of Appeal, when faced with new evidence, must apply what is known as *the jury impact test* when considering whether it renders the conviction unsafe. In Pendleton (2001 UKHL 66) the judges said, at paragraph 19 …*it will usually be wise for the Court of Appeal, in a case of any difficulty, to test their own provisional view by asking whether the evidence, if given at the trial, might reasonably have affected the decision of the trial jury to convict. If it might, the conviction must be thought to be unsafe.* In David's case it would be difficult to imagine that any fair minded appeal judge could deem David's conviction as being safe having taken into account the scale and scope of the non-disclosed evidence, summarized above.

David Ferguson is Innocent

The remit of the Court of Appeal, in England and Wales, is one purely of review. That is; it must not be concerned with the issues of guilt and innocence, merely whether they consider the conviction to be safe or otherwise unsafe, as discussed above. Besides the glaring lack of any genuine motive for him carrying out this brutal killing, the actual chain of events does not support the Crown's theory that David was culpable in any way.

So, let's just review the known facts. For some time prior to Susan's murder David had been diagnosed with a particularly nasty kidney complaint. He had had a stent fitted and was in severe pain, passing blood in his urine and was taking prescription painkillers. The pain was so bad that he found it difficult sleeping at night. According to David's withheld telephone bill, on the day Susan died, he was logged onto the internet for nearly 7 hours until the connection was terminated at 6:50am. He was awakened by his father Ronald knocking on the front door, when he arrived at around 11:15am. This time is supported by the statements of witnesses withheld from the defence. After dressing and making them both a cup of tea, David and his father left the house together about half an hour later, at around 11:45am.

Due to the fact that the Crown's pathologist, Dr Rouse, didn't record a time of death, an indeterminate window of opportunity opens up for anyone to have murdered Susan. The incredulity of the police's claims that CCTV cameras were either not working or were non-existent in the areas that morning that support David's alibi are just a fraction, in this case, of what is now commonly referred to as *the elephant in the*

room. The pachyderm in this case is the stark absence of evidence where it suits the Crown's case. But as we all know, absence of evidence does not infer evidence of absence as David Pointer's unambiguous statement proves.

If Susan died sometime in the period between 10:42am and midday then David has a solid alibi for all of it. Susan's house was some 15 minutes away by car but David's distinctive white Renault 21 car isn't seen by anyone or by CCTV cameras until he arrives in Gillingham at 12:36pm.

Let's consider this again from another perspective implied at trial. The murder was brutal and the killer's clothing would have, undoubtedly, been bloodstained. The Crown said that David had disposed of the murder weapon and some of Susan's clothing on his return from Gillingham that afternoon. Yet no blood, DNA, hairs or fibres from Susan, or her home, were ever found on David's clothing, in his car or in his home. Furthermore if a person was intent on murder, would they publicise their intentions to murder someone known to them on the internet several hours before the event? Would one then, despite supposedly having researched how to clean up after a crime scene, remove ones trousers and underpants and leave sperm on the victim's external intimate parts but *nothing else whatsoever*!

It is an incontrovertible fact that David had been up from midnight until 6:50am that morning and had had only just over 4 hours sleep, when he was awakened by his father knocking at the front door. He was suffering from a kidney complaint that caused bloody discharge from his penis. He was also taking strong painkillers. Who, in all honesty, would believe that someone in this condition would be in any fit state to go out and execute a brutal murder? Besides, the forensic evidence makes no mention of any bloody discharge found at the crime scene which it surely should have done if David had been culpable.

Conclusion

It is, without a doubt, a scandal that Kent Police, the Forensic Science Service and the CPS have conspired to withhold such crucial evidence in this case. Their complicity has clearly denied justice to every party involved, bar, of course, the real murderer of Susan Kent who is, as far as anyone knows, still at large.

The police investigation should have included extensive work to identify and interview the man Susan was seeing called Peter. Whose DNA was on the handcuffs

and in the original epithelial fraction? Whose footprint was it? Why wasn't the knife, which was discovered at the crime scene, forensically tested and why wasn't it entered as an exhibit at the trial? Who was the driver of the small red hatchback car that was seen by a neighbour on her driveway that morning?

David Ferguson is clearly the other victim of this vile crime and is, quite obviously, the subject of a truly gross miscarriage of justice. Sentenced to life imprisonment at the age of 30, he has already spent over 14 years in jail. These are years he will never be able to get back; some of the best years of his life, gone forever. If that wasn't bad enough, he has recently been told, that whilst he maintains his innocence, he will never be considered for parole. If his conviction is not quashed, it is most likely that he will spend the rest of his life in prison for someone else's crime.