Expert evidence – *Hunt v CPS* [2018] EWHC 3341 (Admin), unreported, 27 June 2018, DC.

Legislation: Rule 19.3(2) and (3) of the *Criminal Procedure Rules* 2015 (SI 2015/1490) (CLW/15/28/20) provide "(2) A party on whom such a summary is served must – (a) serve a response stating – (i) which, if any, of the expert's conclusions are admitted as fact, and (ii) where a conclusion is not admitted, what are the disputed issues concerning that conclusion; and (b) serve the response – (i) on the court officer and on the party who served the summary, (ii) as soon as practicable, and in any event not more than 14 days after service of the summary. (3) A party who wants to introduce expert evidence otherwise than as admitted fact must – (a) serve a report by the expert which complies with rule 19.4 (Content of expert's report) on – (i) the court officer, and (ii) each other party; …".

Where the prosecution sought to rely on a stage 1 streamlined forensic report (SFR1) as evidence of the amount of specified drugs in the appellant's blood, and the SFR1 neither purported to, nor in fact, complied with the requirements as to the contents of an expert's report set out in rule 19.4, it also did not comply with rule 19.3(3) and the district judge had erred in admitting the SFR1. The fact that the defendant had failed to comply with the requirements imposed by rule 19.3(2) on a party who is served with a report did not make a report that did not comply with rule 19.4 admissible in evidence.

***Archbold* 2019 references**: 2015 rules, rr.19.3 and 19.4, Second Supp., Appendix B-264 and B-265.

COMMENT:

In its 2011 report, *Expert Evidence in Criminal Proceedings* (Law Com No. 325), the Law Commission endeavoured to address concerns that too much expert evidence was being admitted with insufficient scrutiny, leading to miscarriages of justice. The commission proposed that expert evidence should only be admitted if it is "sufficiently reliable". The government declined to legislate but, as Lord Thomas CJ explained in his 2014 Kalisher Lecture (https://www.judiciary.uk/wp-content/uploads/2014/10/kalisher-lecture-expert-evidence-oct-14.pdf), most of the commission's recommendations were introduced in a "novel way" via amendments to the practice directions accompanying Part 33 of the *Criminal Procedure Rules* 2014 (SI 2014/1610) (now found in CrimPD 19A of the *Criminal Practice Directions 2015*, CLW/15/35/2, [2015] EWCA Crim 1567, unreported, 29 September 2015, Lord Thomas CJ, which accompanies Part 19 of the 2015 rules). As previously noted in the comment to CLW/19/11/29, the impact of these changes has been undermined by, inter alia, the absence of any effort to implement the commission's recommendations for accompanying training of the legal profession and judiciary, the closure of the Forensic Science Service and the introduction of streamlined forensic reporting (SFR).

SFR is a revised case management procedure, which aimed to reduce costs and delay and improve the early guilty plea rate (see the National Streamlined Forensic Reporting Guidance, available at https://www.cps.gov.uk/legal-guidance/streamlined-forensic-reporting-guidance-and-toolkit). The first stage SFR1 summarises the result of the forensic test or comparison that has been carried out and confirms that the prosecution intend to adduce that summary under section 10 of the *Criminal Justice Act* 1967. As the guidance makes clear, the SFR1 is neither a witness statement under section 9 of that Act (it is not accompanied by a statement of truth), nor an expert's report (it does not comply with rule 19.4 of the 2015 rules).

Rule 19.3(1) enables a party who wants another party to admit as fact a summary of an expert's conclusion(s) to serve that summary – and an SFR1 suffices for this purpose. If a conclusion is not admitted, the opposing party must serve a response identifying the "disputed issues" (r.19.3(2)(a)). In the present case, the response stated: "[T]he defendant does not accept that his blood contained excess specified drugs, or that the analysis was

carried out correctly, reliably, or that the analysis result is accurate" (at [5]). The district judge concluded that this did not sufficiently identify the real issues in the case and the SFR1 would therefore be admitted as evidence (at [7]). This pre-trial ruling was binding upon the magistrates who later heard the trial.

The Divisional Court held that the district judge had fallen into error because rule 19.3 does not permit the adduction of an SFR1 except by way of a section 10 admission. There is simply no power to adduce the contents of a summary served under rule 19.3(1) (such as an SFR1), even if the opposing party fails to respond or, as in this case, fails to properly identify the disputed issues. Unless a section 10 admission is made, rule 19.3(3) requires a party who wishes to rely on expert evidence to "serve a report by the expert which complies with rule 19.4".

In excess alcohol cases where the prosecution rely on a reading derived from a sample of breath, Part 19 of the 2015 rules is not engaged because the officer operating the device is giving evidence of fact. Where, however, the prosecution rely on the result of blood or urine analysis, this is expert opinion evidence to which Part 19 applies.

Part 19 is an important protection in many cases in which the prosecution rely upon expert evidence. In a case involving feature comparison evidence, for example, a defendant may be unable to say more than "I was not there" or "I did not touch exhibit X". Such an assertion will trigger a stage 2 report (SFR2), which should comply with rule 19.4. Indeed, in the context of DNA and fingerprint evidence, significant concerns have been raised that SFR1 conclusions are frequently incomplete, misleading and misunderstood by legal practitioners (see Edmond, Carr & Piasecki, *Science Friction: Streamlined Forensic Reporting, Reliability and Justice* (2018) 38(4) O.J.L.S. 764 and McCartney, *Streamlined forensic reporting: Rhetoric and reality* [2019] Forensic Science International: Synergy 83). In particular, an SFR1 provides no indication of the probative value or context of a DNA or fingerprint match. The analysis of blood or urine is usually more straightforward and an SFR2 may add little, indicating a problem with the "one-size-fits-all" approach to SFR. Unless this is resolved by amendments to the 2015 rules, the present case confirms that the role of the SFR1 is limited to case management.

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