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(subject to editorial corrections)**

ICOS No: 22/1088/A01

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IN HIS MAJESTY’S COURT OF APPEAL IN NORTHERN IRELAND

THE KING

v

ZX

**Mr MacCreanor KC with Mr Mullan (instructed by McCallion Jones Solicitors) for the
Appellant**

**Mr Magee KC with Ms Walsh KC (instructed by Public Prosecution Service) for the
Crown**

Before: Keegan LCJ, Treacy LJ and Rooney J

KEEGAN LCJ (*delivering the judgment of the court*)

A reporting restriction was made by Mr Justice Fowler on 15 September 2026 in relation to this case until further order of the court. Pursuant to that order, the defendant, the victims and certain witnesses are identified in this judgment by randomly generated ciphers. Certain personal information has also been omitted or generalised to ensure anonymity.

Introduction

[1] This is an appeal against conviction after a trial for murder and attempted murder of two children by their mother, the appellant. Upon conviction, a total sentence of 20 years’ imprisonment was imposed by Her Honour Judge McColgan KC (“the judge”). Leave to appeal conviction was granted by the single judge, Fowler J, in a comprehensive single judgment dated 3 March 2025. Leave to appeal sentence was refused.

[2] The appellant has remained in custody since 27 July 2021, so for a period of four years and four months which is equivalent to an eight-year eight-month determinate custodial sentence.

[3] In determining this appeal, this court bears in mind the appellate test in *R v Pollock* [2004] NICA 34. In that decision Kerr LCJ set out the principles to be applied by the Court of Appeal when considering appeals against conviction and was clear that the ultimate question which arises is a simple one, namely whether the verdict is unsafe.

[4] There is little factual dispute between the prosecution and defence in this case as the central issue relates to the mental state of the appellant at the time of her stabbing one child to death and seriously injuring the other. As such, expert medical evidence played a crucial role in the trial.

[5] The appeal is brought on three interrelated grounds. The primary ground is that the judge failed to ensure that the appellant received a fair trial as she failed to put the defence case properly before the jury. Integral to this argument is alleged deficiencies in the prosecution's expert psychiatric evidence from Dr Richard Bunn (the second ground of appeal) and how these deficiencies were compounded and perpetuated by Crown counsel's handling of this expert witness, both before and during the trial (the third ground of appeal). Thus, the appeal is advanced on the basis that the judge should have discharged the jury when deficiencies relating to Dr Bunn and Crown counsel were drawn to her attention.

Factual background

[6] The appellant is a foreign national. In 2018, she met her future partner, QM who is from Northern Ireland. At that time, the appellant was aged 26 and he was 48. This meeting took place in the appellant's country of origin where QM was on a motorcycle trip. The appellant lived an uneventful life with no criminal convictions and had employment in two separate countries before she moved to Northern Ireland with QM after meeting him. QM has a significant criminal record.

[7] The appellant and QM lived together in Northern Ireland for three years up to July 2021 when the index events occurred. They had two children together. By the time they arrived in Northern Ireland, the appellant knew she was pregnant with her first child TA. She also gave birth to a second child, RV, shortly before the index events. The tragic events that occurred on the evening of 27 July 2021, resulted in the death of RV, who was a baby, and caused serious injury to TA, who was an infant.

[8] An important context to events is that three days prior to the stabbing of the children, on the evening of 24 July 2021, an incident led to QM's removal from the home. The appellant had telephoned police reporting she had been pushed by him and felt unsafe. Police attended this incident and recorded events on body worn video. In this footage, the appellant was seen to be upset and distressed: she wanted to get passports for the children and to return with them to her parents in her home country. She said to police, "I no feel safe beside him." QM was removed from the

home, arrested and released on bail on condition that he was not to return to the family home.

[9] Between 24 July, when QM was removed, and the early evening of 27 July 2021, the appellant was recorded on CCTV shopping in her local area and in Belfast City centre. Additionally, two of QM's relatives gave evidence as to how they found nothing remarkable about the appellant when they called at her home on 25 and 27 July.

[10] On the evening of 27 July 2021, QM received a phone call from the appellant during which she said, "I love you. I just killed baby [RV]. [TA] is lying slowly bleeding. I am going to kill myself." She then hung up the phone. QM, who at that time was living in England believed what the appellant was telling him and quickly contacted the West Midlands Police who, in turn, contacted the Police Service of Northern Ireland ("PSNI"). The PSNI attended at the home thereafter.

[11] Prior to their attendance PSNI received a call from the appellant herself during which she was shouting, "I killed my kids ... my son ... my daughter is in the house ... I (inaudible) kill myself ... my son has died. I killed my kid for him, the dirty bastard ... I kill myself. In a minute I kill myself."

[12] When police arrived at the home at approximately 8:15pm on the evening in question, they found the appellant sitting on a bed in the living room holding TA by the head. TA was screaming. RV was lying on the bed and appeared lifeless. The appellant had blood on her and a wound to her neck which was bleeding, but she appeared calm and emotionless. Police made repeated attempts to administer CPR to RV which were unsuccessful. The appellant is recorded as saying, "I wouldn't worry about him. He's dead. I stabbed him."

[13] Two blood-stained knives were recovered at this time, one approximately three inches long, which the appellant said she had used on herself and another approximately five inches long. Tragically, baby RV was pronounced dead at 9pm after sustained efforts were made to save him. He had sustained two stab wounds, both to his chest area, one of which penetrated his heart. TA was found to be bleeding from a serious wound to her chest and was in pain but alive. She had sustained penetrating stab wounds injuring her liver and abdomen and she was incredibly fortunate to have survived.

[14] The appellant was arrested and noted to have self-inflicted injuries to her chest and neck. She was taken for treatment to the Mater hospital and recovered. It is recorded that on being asked at the hospital what had happened, the appellant told the doctor she was annoyed at a family situation and had killed her eight-week-old baby, attacked her two-year old and then turned the knife on herself, and that she wanted to kill herself.

[15] Upon discharge from hospital on 29 July 2021, the appellant was arrested, taken to Musgrave Police Station and interviewed. She was assessed as fit for interview. When presented to the custody officer she initially asked if it was possible for her to be transferred to a prison in her home country and said, "I killed my children." She told the custody officer, "I'm really sorry for what I have done." In the custody suite she was asked if she had any mental health problems and replied, "considering what I have done, probably I do." When asked whether she suffered from depression, she replied, "depression 100%. I cry too much." When asked whether she had ever tried to harm herself or had any intention of harming herself presently, she replied "no." She also remarked that if she could only turn back time.

The specific context of this case

[16] The following chronology of events has also been provided which is useful in framing events and how this trial was conducted:

27/7/21	Arrest of appellant.
29/7/21	Interview of appellant.
30/7/21	First appearance at court.
14/1/22	PE - returned for trial.
4/3/22	Arraignment.
6/5/22	First examination by Dr Bunn.
12/9/22	First trial and jury sworn (adjourned as Dr Bunn's report just received on same date when emailed by Dr Bunn to R Weir KC 01:17 hrs).
12/9/22	PPS serve Dr Bunn report 08:58 hrs.
20/9/22	Case opened to the jury.
27/9/22	First trial. Jury discharged, evidence had been given by police at scene, medical staff who treated accused and children (Drs Milliken, Dalzell and McQuillan), also CCTV, 999 calls and BWV had been shown by this stage. The jury was discharged upon substantial disclosure being made by the prosecution being both digital in nature relating to the appellant's partner and to issues going to his bad character.
11/11/22	Second examination by Dr Bunn.
30/01/23	Trial listed to commence but does not commence. Adjourned.

1/2/23	Trial listed to commence.
13/2/23	Dr Bunn's notes requested by defence.
20/2/23	Evidence of appellant commences.
21/2/23	Cross-examination of the appellant. At p1256 of the book of appeal, the Crown case re the quote "he destroyed my life so I destroyed his" is first put to appellant.
22/2/23	09:59 hrs PPS serve scanned version of Dr Bunn's May 2022 notes.
22/2/23	23:07 hrs PPS serve scanned version of Dr Bunn's November notes.
3/3/23	Cross-examination ends.
5/3/23	Telephone conversation between Dr Bunn and Mr Weir KC.
9/3/23	Meeting in consultation room between Dr Bunn and Mr Weir KC.
9/3/23	Dr Bunn commences his evidence.
23/3/23	Jury verdicts.

[17] On any reading of the above chronology this is a highly unusual and tragic case involving a mother killing one child and seriously injuring another and herself. The appellant was charged with murder and attempted murder, both crimes requiring specific intent. However, quite properly there was no dispute between the parties that the offence of infanticide should be left before the jury as an alternative to the offence of murder. We refer to this unique and rare offence in some brief detail as follows.

[18] The offence of infanticide is set out in the Infanticide Act (Northern Ireland) 1939, as amended by the Coroners and Justice Act 2009. These legislative provisions mirror the provisions in England & Wales dealing with infanticide. The law here, is as follows:

"(1) Where a woman by any wilful act or omission causes the death of her child, being a child under the age of twelve months, but at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child, then, if the circumstances were such that but for this Act the offence

would have amounted to murder or manslaughter, she shall be guilty of felony, to wit of infanticide, and may for such offence be dealt with and punished as if she had been guilty of the offence of manslaughter of the child.

(2) Where upon the trial of a woman for the murder or manslaughter of her child, being a child under the age of twelve months, the jury are of opinion that she by any wilful act or omission caused its death, but that at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child, then the jury may, if the circumstances were such that but for the provisions of this Act they might have returned a verdict of murder or manslaughter, return in lieu thereof a verdict of infanticide.

(3) Nothing in this Act shall affect the power of the jury upon an indictment for the murder of a child to return a verdict of manslaughter or a verdict of not guilty on the ground of insanity."

[19] Quite properly the judge invited submissions on behalf of the parties as to her direction to the jury regarding the alternative of infanticide on count 1. Both parties agreed that *R v Tunstill* [2018] EWCA Crim 1696 was the leading authority. The principles to be derived from this case are:

- (i) The intention behind the legislative provisions of the Infanticide Act (both in England & Wales and Northern Ireland) was to be merciful.
- (ii) Once evidence capable of supporting the offence of infanticide has been raised, the burden is on the prosecution to prove the offence of infanticide is not made out.
- (iii) The balance of a mother's mind being disturbed at the time of the killing must have been affected by the failure to have fully recovered from the effects of childbirth. However, this failure need not be the sole cause of the disturbance, rather it must be an operative or substantial cause or a contributory cause. It must be more than a minimal cause.
- (iv) A pre-existing mental health condition/illness taken together with the effect of having given birth would provide a sufficient evidential basis to satisfy the requirement of "by reason of."

- (v) The issue of causation is a matter of fact for a jury after appropriate direction from a judge as to what can constitute a legally effective cause.

[20] In addition, in this jurisdiction Treacy J discussed sentencing for this offence in a decision of *R v AK* [2016] NICC 22. In that case the judge made a probation order upon a conviction for infanticide and pointed out at para [40] as follows:

“The leading commentaries in both Archbold 19-194 and Blackstone B1.89 indicate that custodial sentences are extremely rare - see also *Lewis* [1989] 11 CR App R(S) 457, where a 21-year-old defendant had fatally stabbed her newly born child. The case did not involve a conviction for infanticide. The defendant pleaded guilty to manslaughter by reason of diminished responsibility. The Court of Appeal adopted a similar course as in *Sainsbury* substituting a probation order of 3 months for the 12-month custodial sentence imposed by the judge at first instance.”

[21] There is no appeal brought in relation to how the judge charged the jury on the offence of infanticide. As a matter of interest we record that the appellant now raises a Canadian authority of *R v Borowiec* [2016] SCC 11 in which the court found that the grammatical and ordinary sense of the words used in the Canadian statute (which replicates ours) supports the conclusion that the legislator did not intend to restrict the availability of infanticide to situations where the psychological health of the woman was substantially compromised or where a mental disorder was established and that the disturbance need not constitute a defined mental or psychological condition or a mental illness. This approach denotes a consideration of infanticide as an offence which may be established by virtue not just of a recognised psychiatric condition but also social circumstances or at least a mix of psychiatric and social circumstances.

[22] As there is no appeal on this issue, it would be wrong of us to offer any view or specific guidance on the utility or application of this Canadian authority. Plainly, there are numerous views on the ingredients of the current infanticide offence which will feed into a wider policy debate. In the United Kingdom we note that the Law Commission of England & Wales is now tasked with a review of homicide, sentencing and infanticide.

[23] Returning to the specifics of this case, if count 1 had been the only charge there may have been a clearer path in terms of outcomes given the choice between murder and infanticide. However, the undoubted complication in this case is that an attempted murder charge was also preferred regarding the appellant’s stabbing of TA and the jury convicted on that count, rejecting an alternative of section 18, grievous bodily harm with intent.

[24] The opinions of both expert witnesses were solely directed to the potential partial defences to count 1. Neither expert gave any evidence to suggest the appellant was incapable of forming the requisite intent for attempted murder. No such defence was advanced upon appeal, nor was it argued that the evidence at trial, including from the experts, fell far short of suggesting that the appellant did not or could not form the requisite mens rea for the act she accepts she carried out to her daughter.

[25] The prosecution relies upon the content of the appellant's police interviews where she stated:

"I tried to kill her [TA] too but I couldn't do it. I just hurt her."

[26] Also, given material contained in the appellant's diary entries written before the stabbings where she expressed an intent and a plan to kill her children, the prosecution maintains that there is no foundation for suggesting the appellant had any available defence. Some excerpts from those entries addressed to QM, which capture the point, are set out below:

"I chose to take our lives ..." (p680).

"... but now it doesn't matter I took our lives I hope you're happy now" (p681).

"God what I've become to take my life and the children so you can be happy" (p681).

[27] In addition, the prosecution relied on appellant's evidence under cross-examination where she said:

"Q. When did you decide that you were going to kill the children?

A. It was the afternoon it happened ... it was the afternoon but I don't know exactly when. I guess after I finished writing this."

The appellant went on to state in evidence that she did not do it because she "wanted to" but felt it was the only solution.

[28] Also material are the appellant's police interviews. In her first series of police interviews the appellant made admissions in relation to what happened, as follows:

"I took the knife, I went beside [RV] in bed, I looked at [RV], I raised my hand. He looked at me with his little

eyes and he started to smile at me. I took the knife back to the kitchen. Then I went back to him and kissed him. I can see him in front of me, how he was smiling. [TA] came and kissed both of us. I told both [TA] and [RV] that mum loves you and you will always be in my heart. I went to the kitchen. I took the knife and I stabbed [RV], then I took [TA] from the sofa, the corner sofa. I tried to kill her too, but I couldn't do it. I just hurt her. I tried to kill myself too. So (inaudible) will have a happy life beside his woman where he moved to. After this, I called him, and I told him that I killed the children and that now I will kill myself."

[29] In later interviews, the appellant also disclosed abuse which she was subjected to by QM as follows:

"This is the only solution that came into my mind ... everything I have done; I have done it because of him. He just, he used us too much. It is very hard to have nobody, to have no one to speak to, to end up to just write in a book only and then to end up doing what I have done. It is very hard. Nobody can understand.

... I was, I'm sure how to put it. I'm not sure if you know what it is like to be a like a dog on a chain, just always chained, to have no freedom, to have no friends and if you speak with your parents or your sister, I had to explain everything that I was speaking with them. If I wasn't telling him, he was calling me all sorts of names. He was telling me I'm [a foreign national] and I always say bad things but all I was doing was I was speaking to my mum ... All I wanted was to go home with my kids ..."

[30] Subsequently, during interview the appellant alleged that her partner had sexually abused her during the relationship, that he had paid for women for sex and was involved in drugs.

Analysis of the grounds of appeal

(i) Ground 1 – The evidence of Dr Bunn, expert witness for the prosecution

[31] We embark upon part of our analysis by recording the developments that occurred during the appeal hearing as follows. On Friday 27 June 2025 when the appeal was part heard, the prosecution emailed the court at 09:44 hrs to indicate that the prosecution:

“do not advance any contrary argument in respect of the conviction (for murder on count 1).”

[32] The rationale for the revised prosecution position is found in the skeleton argument as follows:

- (i) In respect of count 1, due to the impact of the evidence of Dr Bunn in the course of the trial, the prosecution makes no contrary submission in respect of the safety of the conviction on count 1.
- (ii) In respect of count 1, the Crown contends that a retrial should be ordered in advance of which a fresh expert, uncontaminated by the issues impacting upon the safety of the conviction in count 1, be instructed to comment on the issues of infanticide and diminished responsibility.
- (iii) In respect of count 2, the Crown contends that the conviction is safe and that the appeal should be refused.

[33] As to the import of this revised position, the prosecution maintained (i) that the above position had no material impact upon the safety of the conviction on count 2 (attempted murder) given that the evidence of Dr Bunn and Dr Murphy was singularly focused on potential partial defences open to the appellant in respect of count 1 only. Also, (ii) that the appellant did not advance any potential defence to count 2 and that the elements of the offence were clearly made out. Finally, (iii) that the jury were properly directed in respect of count 2 in the route to verdict document which was agreed by all counsel.

[34] The prosecution position is highly unusual and probably unprecedented in this jurisdiction. However, we are bound to say that the concession in relation to count 1 was entirely predictable and appropriate given the inadequacies of the evidence of Dr Bunn which we address in this judgment. It follows that due to the tainted and unsatisfactory nature of the evidence of Dr Bunn there is now no dispute that the conviction on count 1 should be quashed. However, given the seriousness of this issue in a trial of this nature, it is important to explain how this situation arose not least to ensure that it never occurs again. We begin with the conduct of the trial.

[35] Given the factual matrix, the psychiatric evidence was key. Dr Paula Murphy was called by the defence first to deal with issues of diminished responsibility and infanticide. We note that Dr Murphy has a particular expertise in dealing with infanticide cases. After her evidence, Dr Richard Bunn was called for the prosecution. Both psychiatrists had examined the appellant in May 2022, some 10 months after the stabbing on 27 July 2021.

[36] Summarising the psychiatric evidence, it was Dr Murphy’s opinion that the appellant was suffering from depression of a moderate to severe level at the material

time and, in her opinion, the relationship that she had been in with QM was suggestive of coercive control. This assessment formed Dr Murphy's opinion that a mental disorder substantially impaired the appellant's rational decision making and self-control at the material time. Insofar as Dr Murphy was concerned, the defence of diminished responsibility was available to the appellant. Dr Murphy was also of the opinion that the appellant was still recovering from the effects of childbirth at the material time and that the defence of infanticide was open to her.

[37] Dr Murphy opined that there were five broad categories of parents who kill their children namely: altruistic, acutely psychotic, accidental filicide usually through maltreatment, unwanted child syndrome and revenge filicide. She further opined that the final category, revenge killing, was the rarest, that it would occur against the backdrop of infidelity and would mostly involve male perpetrators. Whilst this was to be a major point of contention later in the trial, Dr Murphy was cross-examined on this point without objection by Mr Weir KC.

[38] Dr Bunn was then called on behalf of the prosecution. He confirmed that he had examined the appellant on three occasions in person at Hydebank women's prison. Summarising his evidence, Dr Bunn agreed with Dr Murphy that the appellant suffered from depression, but he was of the view it was not at the degree of severity claimed by Dr Murphy. Dr Bunn's evidence was that the appellant was mildly or moderately depressed but nevertheless depressed. Mr Weir asked Dr Bunn about the five known motives for parents who kill their children after he had first raised this with Dr Murphy in her cross-examination. When questioned about this Dr Bunn stated that in his opinion the most likely reason for the killing was "spousal revenge." However, this theory did not appear anywhere in his reports.

[39] Dr Bunn was cross-examined on the above omission by Mr MacCreanor for the defence. The defence skeleton argument dealing with the inadequacies of Dr Bunn's evidence is an impressive piece of work augmented by compelling submissions on this appeal point made by Mr MacCreanor. Also, the transcript of exchanges makes for difficult reading for the prosecution. We summarise how cross-examination exposed the following inadequacies in Dr Bunn's evidence.

[40] First, it emerged that Dr Bunn had been given a research article authored by Resnick by Mr Weir which referred to spousal revenge. It also transpired that Dr Bunn's initial report marked draft, was sent to Mr Weir in the first instance. Furthermore, it emerged that a quotation from the appellant found in Dr Bunn's report "he destroyed my life, so I destroyed his" was not replicated in his original notes once produced. The evidence of Dr Bunn was that he heard the appellant make this comment at the end of his interview with her. However, Dr Bunn's original notes, which were only provided mid-trial, confirmed that only the first part of the quote "he destroyed my life" was written in the notes and this quote was recorded in the middle of the consultation and not at the end as alleged in Dr Bunn's evidence-in-chief. It was put to Dr Bunn that he had lied about what the appellant

said to him and, after exchanges, he agreed that he had. (but later resiled from this position)

[41] In addition, we note Dr Bunn's acceptance of an error as to the definition of infanticide. The judge highlighted this in her charge to the jury. That said, notwithstanding his misstatement of the law, Dr Bunn did not accept that post-partum issues were a cause in the appellant's actions. Put simply, he did not accept that the appellant's depression impaired her ability to understand the nature of her conduct.

[42] The core issue raised by the defence was that Dr Bunn had just ended his evidence-in-chief by stating that in his opinion, the most likely reason for the killing of the children was spousal revenge. This was understandably raised by the defence with the judge as, remarkably, this opinion had not appeared in Dr Bunn's notes or reports. The defence therefore lodged a written application asking for the jury to be discharged. The judge refused the discharge application on the morning of 10 March 2023, without hearing any oral argument from the defence or without hearing at all from the prosecution. We will return to the judge's conduct in a latter section of this judgment. However, for now we return to the cross-examination of Dr Bunn which highlighted further concerning issues as follows.

[43] Significantly, it came to light that a telephone conversation between Dr Bunn and Mr Weir took place before Dr Bunn came to court to give evidence. This was estimated at 45 minutes to one hour in length over the telephone. This conversation was unrecorded or noted by either party.

[44] Also, the first time Dr Bunn placed considerable reliance on the relatively stable state or condition of the appellant's home as a contra indicator of depression was in evidence-in-chief. Again, this did not feature in his notes or reports and so the claim was made that this evidence was simply raised after the event to bolster the Crown case.

[45] In addition, from the transcript of the hearing we can see the heavy criticism of Dr Bunn's consultation notes raised by the defence. This was because the notes were only made available late on in the trial when requested and, also because Mr Weir had cross-examined the appellant on a portion of the notes which did not appear in the record of the consultation and in the first report of Dr Bunn, namely the phrase "he destroyed my life, so I destroyed his." Our concern is obvious that Dr Bunn's handwritten notes when eventually provided did not contain the specific quotation being attributed to the appellant and only contained a part of the quotation "he destroyed my life."

[46] Furthermore, it was accepted by Dr Bunn under cross-examination that he had not considered the body worn footage, he had not asked to see it, and he did not actually look at it as it was not a part of his assessment.

[47] Finally, it was established that Dr Bunn also failed to accurately note the medical records as to when and to what extent the appellant had received anti-depressant medication. When pressed about all of these omissions and issues, Dr Bunn simply said it did not change his opinion in the case.

[48] The above catalogue of deficiencies is an obvious cause of concern given the duties incumbent upon an expert witness. It goes too far to say that Dr Bunn inadvertently accepted that the test of infanticide was met. However, the Crown rightly accepts that the nature of Dr Bunn's evidence means that little or no emphasis can be placed upon it. What this means, is that Dr Bunn's evidence was not evidence that a jury could rely on in a case of this nature.

[49] The point is not a novel one in criminal law terms. *May on Evidence* discusses the obligations of an expert witness referring to para 271 of *R v Harris and Others* [2006] 1 Cr App R 5 which was subsequently approved in *Bowman* [2006] 2 Cr App R 3, which suggests that:

“[271] ...

- (1) Expert evidence presented to the court should be and seen to be the independent product of the expert uninfluenced as to form or content by the exigencies of litigation.
- (2) An expert witness should provide independent assistance to the court by way of objective unbiased opinion in relation to matters within his expertise. An expert witness in the High Court should never assume the role of advocate.
- (3) An expert witness should state the facts or assumptions on which his opinion is based. He should not omit to consider material facts which detract from his concluded opinions.
- (4) An expert should make it clear when a particular question or issue falls outside his expertise.
- (5) If an expert's opinion is not properly researched because he considers that insufficient data is available, then this must be stated with an indication that the opinion is no more than a provisional one.
- (6) If after exchange of reports, an expert witness changes his view on material matters, such change

of view should be communicated to the other side without delay and when appropriate to the court.

...

[273] In our judgment, the guidance given by both Creswell J and Wall J are very relevant to criminal proceedings and should be kept well in mind by both prosecution and defence."

[50] The single judge sums up these well-known and basic requirements in a passage we adopt which reads as follows:

"... the defence were entitled to have been given advance notice of Dr Bunn's opinions on the intention to give evidence on spousal revenge, the severity of self-inflicted injuries, the condition of the applicant's home and its importance in determining the level of depression suffered by her, and the quote 'He destroyed my life, so I destroyed his', together with Dr Bunn's notes which undermined the import of this evidence. Individually, these are significant, but they must also be examined collectively and in the context of the applicant's argument that as a result of prosecutorial misconduct Dr Bunn was simply aligning himself with the central pillars of the prosecution case based on matters which before the trial were of no or marginal consequence to Dr Bunn as an expert and absent from his reports. This arguably undermined the fairness of the trial."

[51] The accepted facts established in this appeal regarding the evolution of the expert's evidence mean that such evidence could not be, and be seen to be, the independent product of the expert witness uninfluenced as to form or content by the exigencies of litigation. Plainly it was not. Rather, the only rational conclusion that can be drawn is that Dr Bunn was simply aligning himself with the central pillars of the prosecution case based on matters which before the trial were of no or marginal consequence to Dr Bunn as an expert and were absent from his reports. In other words, Dr Bunn departed significantly from his remit as an independent expert. Instead, he effectively assumed an impermissible role promoting a prosecution case that was not foreshadowed in the Crown opening or in his own reports. On any view this results in Dr Bunn appearing biased in favour of the case being put forward by the prosecution and eroding his role as an independent expert witness.

[52] Following from the above discussion of events an unfortunate but entirely predictable outcome has resulted. The worrying reality of this case is that save for the perseverance of defence counsel in insisting upon seeing Dr Bunn's notes and interrogating his interaction with Mr Weir, there is a real possibility that the

deficiencies in the evidence and the partiality of Dr Bunn would not have been exposed. That could have led to a miscarriage of justice. The fairness of the trial process depends upon independence and impartiality of expert witnesses. The deficiencies in Dr Bunn's evidence are now recognised by the prosecution.

[53] Accordingly, due to the flaws in this key aspect of the prosecution case in relation to the appellant's state of mind this ground of appeal succeeds.

(ii) Ground 2 - the conduct of prosecution counsel

[54] It will be apparent from the preceding section that there is related difficulty with how prosecution counsel approached Dr Bunn's evidence. This criticism is comprised in the next ground of appeal. As such we afforded Mr Weir an opportunity to provide his position to us which we have considered.

[55] Guidance as to the preparation and marshalling of expert evidence by legal professionals is provided in *Henderson; Butler; Oyediran* (Practice Note) [2010] EWCA Crim 1266. In this case it was observed that in cases turning on medical evidence, justice depends on proper preparation and control of the expert evidence from the outset of the investigation. By the time the trial starts, the essential medical issues which the jury must resolve, should all be clear. The expert opinion should be unbiased and provide details of any literature relied upon. Disclosure of all reports, notes and the substance of the case should be made.

[56] Unfortunately, Crown counsel has also adopted an impermissible approach in this case. First, in his interaction with the prosecution expert witness Dr Bunn, he was not attended by an instructing solicitor, when some notes were taken. Then, disclosure of those notes was delayed until after the primary evidence was given.

[57] A further highly concerning aspect of Mr Weir's conduct is that he introduced the Resnik article we have discussed above to Dr Bunn to support a specific case of "spousal revenge" which was not flagged in the opening by the prosecution and which developed during the trial. The significance of the deficiencies becomes apparent due to the prominence of these issues in Dr Bunn's evidence and his acceptance that they had not been raised in his reports and would not have been raised in evidence but for the consultation with Crown counsel. In addition, the way in which the issues raised in the consultation became notably aligned with the evidence of Dr Bunn in the trial and increasingly supportive of the evolving Crown case, has given rise to an appearance of coaching or of having consciously or sub-consciously influenced Dr Bunn. There is nothing in Mr Weir's written response that allays our concerns.

[58] Suffice to say that we find the prosecutorial conduct in this case to have fallen below the recognised standards of good practice. The boundaries that counsel should not cross are well-known and articulated in cases such as *R v Momodou and Limani* [2005] 2 Cr App R 6:

“There is a dramatic difference between witness training or coaching and witness familiarisation ...

... The witness should give his or her own evidence, so far as practicable uninfluenced by what anyone else has said, whether in formal discussions or informal conversations. The rule reduces, indeed hopefully avoids any possibility, that one witness may tailor his evidence in light of what anyone else has said, and equally, avoids any unfounded perception that he may have done so.”

[59] The truth of the matter here is that, prior to the impugned prosecutorial misconduct, the expert himself had never felt the need to research “spousal revenge.” The concept of spousal revenge as a relevant issue never occurred to him following his contact with the suspect and in the preparation of his report. Yet, he concluded his evidence in chief by stating his opinion that the “most likely reason” for what the appellant had done was “spousal revenge” which, as stated above, had never appeared in his notes or his report or featured in the Crown opening.

[60] In addition, we are not satisfied that the PPS personnel took these queries sufficiently seriously during the trial. The defence solicitor rightly asked for an explanation from the PPS on these matters. However, the first reply of 10 March 2023 was totally dismissive. The second reply of 13 March 2023 did not properly address the core concerns in relation to how this expert was approached and spoken to by prosecution counsel. Subsequently, we cannot see any rational explanation as to why Dr Bunn’s notes were not provided at an earlier stage to the defence.

[61] Finally, we raise a real concern that Dr Bunn did not have any letter of instruction. The PPS letter of 13 March 2023, replying to this issue, simply states “there is no letter of instruction. Dr Bunn was instructed by the PPS and was given a brief explanation as to what the case was about but that was not in writing.” This is patently not good enough. The practice of instructing experts in this way in the criminal field lacks transparency and to our mind must change immediately. In future, experts in any criminal case should have a letter of instruction. Furthermore, an expert should not make a case simply based on the prosecution position given the overriding professional obligation to act independently and report to the court.

[62] Accordingly, for the reasons we have given, ground 2 of appeal relating to the misconduct of the prosecution and prosecution counsel also succeeds.

Ground (iii) - Applications to the judge to discharge the jury

[63] We can deal with the remaining aspect of the appeal in short compass given what we have already said above. The expert evidence was key to this case. The judge rightly stressed that the jury was not bound by the evidence of any expert no matter how compelling or disappointing.

[64] The Crown Court Compendium at 10-13 provides a useful summary of how juries should be directed when it comes to expert evidence in the following terms:

“(2) In every case, the jury should then be directed as follows:

- (a) Expert witnesses give evidence and opinions in criminal trials to assist juries on matters of a specialist kind which are not of common knowledge.
- (b) However, as with any other witness, it is the jury's task to weigh up the evidence of the expert(s), which includes any evidence of opinion, and to decide what they accept and which they do not ...
- (c) The jury's verdicts must be based on the evidence as a whole, of which the expert evidence and opinion forms only a part.”

[65] However, a separate complaint arises, namely that the judge should have discharged the jury given the contamination of the expert evidence. The test for discharge of a jury is well-known. A trial judge has the discretion to discharge the whole jury from giving a verdict. Guidance on this was given in the decision of *Windsor v R* (1866) 122 ER 1150 and summarised in *Blackstone's Criminal Practice* 2025 as follows:

- “(a) A jury should not be discharged unless a high degree of need for it arises;
- (b) This is purely a matter for the judge's discretion;

If the judge is invited to discharge the jury and refuses to do so, on conviction the accused may appeal on the basis that continuing with the original trial casts doubt on the safety of the conviction.”

[66] In this case there were two applications to discharge the jury made by Mr MacCreanor. The first application to discharge the jury was based on the frailties of Dr Bunn's evidence. This was dismissed by the judge without an oral hearing or without asking the prosecution to respond.

[67] The second application to discharge the jury came after the judge's charge to the jury. Defence counsel based this application on what he alleged were the various failures by the judge to address the multiple issues which had arisen in the case,

many of which are adumbrated supra, and which had been condensed to writing and served on the court and the Crown in relation to issues requiring to be addressed in the judge's charge to the jury. The application asserted that almost none of the raised issues had been addressed or alternatively had been addressed inadequately. The judge rejected this oral application in short fashion indicating that she had dealt with all relevant matters during the trial and in her closing.

[68] Given the issues involved, as a bare minimum, we are of the view that the judge should have conducted a hearing in respect of the first application and in failing to do so did not give the issue the careful consideration and analysis required. It was an error on the judge's part not to hear from Mr Weir at all given the centrality of the issue.

[69] We are also wholly satisfied that the second application to discharge the jury after the charge to the jury, was dealt with in much the same short fashion as the first application. Again, this prevented the careful consideration and analysis required to deal with an application of this nature.

[70] Accordingly, we are driven to find that the judge did not pay adequate regard to this issue and appeared to minimise the import of the prosecution conduct and Dr Bunn's evidence. This approach is surprising because it is clear to us that the evidence of Dr Bunn was flawed and the consequence of this is that the case could not have proceeded to the jury because the jury could have easily been misled by the expert evidence.

[71] Hence, this is a rare case where the judge has made an error in failing to discharge the jury. This finding is sufficient to deal with the final ground of appeal given that the jury should have been discharged. It is self-evident that we do not think that any charge and direction would have rectified the prejudice caused to the appellant. Therefore, ground 3 of this appeal also succeeds.

Overall conclusion on the three grounds of appeal and impact on each count

[72] Thus, having examined the three grounds of appeal which are overlapping, we reach our overall conclusion that the defence argument is unassailable and must succeed. That is because the serious errors in the conduct of this trial which began with the prosecution's misconduct were compounded by the expert witness and the judge.

[73] It follows from what we said above that the conviction on count 1 (murder) is unsafe. In a supplementary skeleton argument, the prosecution asks us to disaggregate count 1 from count 2 (attempted murder) given that the issues pertaining to count 2 are different which the prosecution maintain was not disputed in the sense of no defence being available. The defence takes the opposite view. We have considered the competing arguments in the context of the case and having made findings of serious expert witness and prosecutorial misconduct. Given that

these two counts arise out of a series of events which occurred at the same time in relation to two children, we could not be satisfied that the conviction on count 2, given its close connection with count 1, can also be safe. That is due to the potential prejudice that follows from the misconduct we have found in this case. We will, therefore, given the interrelationship between counts, follow the same approach on count 2 as on count 1 and quash both convictions.

[74] We then turn to disposal and the two subsidiary questions that arise i.e. whether we should substitute alternative charges and/or whether we should order a retrial. Given the highly unusual circumstances of this case, these legal issues are more complicated than normal. We consider them as follows.

Substitution

[75] The defence submits that we should substitute alternative lesser charges on both counts 1 (infanticide) and 2 (grievous bodily harm with intent) pursuant to section 3 of the Criminal Appeal (Northern Ireland) Act 1980 ("the 1980 Act"). That would effectively dispose of the case at appellate level. The prosecution argues that pursuant to section 6 of the 1980 Act, we should order a retrial in the interests of justice.

[76] When considering the applicability of section 3 of the 1980 Act, the court has a discretion to substitute a verdict in respect of an alternative offence which on the finding of the jury, it appears to the Court of Appeal that the jury must have been satisfied of facts which would render the appellant guilty of that offence. The wording of the section is clear and there are two parts to the consideration which flow from the language used in the statute as follows:

- (i) This section applies on an appeal against conviction, where the appellant has been convicted of an offence to which he did not plead guilty and the jury could, on the indictment, have found him guilty of some other offence, and on the finding of the jury, it appears to the Court of Appeal that the jury must have been satisfied of facts which proved him guilty of the other offence; and
- (ii) The court may, instead of allowing or dismissing the appeal, substitute for the verdict found by the jury a verdict of guilty of the other offence and pass such a sentence.

[77] Having considered the arguments, we agree with the prosecution submission that section 3 applies to two broad categories of cases. The first is where an appellant was tried and convicted on a single count, but the evidence was such that the jury could have convicted on a substituted offence. This does not apply. The second category of case is where there are counts charged in the alternative and the jury have convicted on a count which is not supported by the evidence. Whilst the offences of manslaughter by reason of diminished responsibility and infanticide

were not express alternatives on the facts of the indictment, the prosecution rightly take no issue on the potential applicability of this category.

[78] The provision in section 3 for substitution is normally utilised in circumstances where on account of a legal technicality or where in law there was no evidence of an element of the offence. In such circumstances the Court of Appeal can substitute a verdict which the court concludes accords with the jury finding on fact. The court cannot interfere in this decision unless it is satisfied that the jury must have been satisfied of facts which proved the defendant guilty of the substitute offence.

[79] The present case falls into the category that, on the facts, the jury were not satisfied that the elements of the offence of infanticide or manslaughter by diminished responsibility, both of which involve consideration of the mental state of the appellant, were present. In such circumstances, it would be wrong of the appellate court to subvert the findings of the jury and impose its own view no matter its opinion on the expert called on behalf of the Crown. There remains a dispute in relation to the appellant's mental state and so this is not a case where, for instance, as in other cases, diminished responsibility is accepted. It is, therefore, right that this court is not drawn into a substitution position.

[80] None of the cases the appellant cites in support of substitution truly support that proposition. In cases in which manslaughter by reason of diminished responsibility have substituted verdicts of murder are limited to those where the issue of diminished responsibility was not in dispute on appeal (see *R v Weekes* [1999] 2 Cr App R 520) or where the prosecution did not seek a retrial (*R v Blackman* [2017] Crim LR 557). In cases where 'fresh' evidence raised the issue of diminished responsibility and rendered a conviction unsafe, the appropriate course is to order a retrial where the issue remains in dispute (for example in *R v Campbell* [1997] 1 Cr App R 199). The reliance placed by the appellant upon *R v Tanner* [2024] EWCA Crim 1576 is misplaced given the fact specific nature of that case. Similarly, the case of *R v Blackman* arises in an entirely different context.

[81] The Court of Appeal in England & Wales has stressed that the power to substitute a verdict must be exercised with great caution (*R v Caslin* (1961) 45 Cr App R 47, per Lord Park CJ at 55). That is because it is the findings of a jury themselves that form the basis for the exercise of the power (as opposed to an attempt by the appellate court to speculate as to what their verdicts might have been in an alternative scenario). We adopt that approach and decline to substitute alternative verdicts in this case.

Retrial

[82] The final separate question we must answer is whether to order a retrial. The prosecution contends for a retrial and the defence asks us not to so order effectively ending the case.

[83] The question of whether a retrial should be ordered is a matter within the discretion of the court pursuant to section 6 of the 1980 Act. This replicates the England & Wales provision found in section 7 of the Criminal Appeal Act 1968. Section 6(1) of the 1980 Act reads:

“[1] Where an appeal against conviction is allowed by the Court of Appeal under section 2 of this Act and it appears to the court that the interests of justice so require, the court, upon quashing the conviction and any sentence passed thereon, may order the appellant to be retried.”

[84] In deciding whether a retrial should be ordered, we have considered the following guiding principles which both parties have highlighted in written argument:

- (i) Considerations of public interest including the seriousness of the offence (see *R v Graham HK* [1997] 1 Cr App R 302). In that case Lord Bingham held at 318:

“It is apparent that the conditions which permit this court to order a retrial are twofold: the court must allow the appeal and consider that the interests of justice require a retrial. The second requires an exercise of judgment and will involve consideration of the public interest and the legitimate interests of the defendant. The public interest is generally served by the prosecution of those reasonably suspected on available evidence of serious crime, if such prosecution can be conducted without unfairness to or oppression of the defendant. The legitimate interests of the defendant will often call for consideration of the time which has passed since the alleged offence, and any penalty the defendant may already have paid before the quashing of the conviction.”

- (ii) The length of time since the commission of the offence. For instance, in *R v Grafton and Grafton*, *The Times*, 6 March 1992, the Court of Appeal in England & Wales observed that delays in the modern trial process had to be taken into account when considering retrials in respect of serious offences.
- (iii) The amount of any sentence already served relative to the charges.
- (iv) The appellant's age. For instance, in *R v B (RA)* (96/5483/Y5) (unreported) 27 January 1997, no retrial was ordered considering the defendant's age – 78 years old.
- (v) The ability to rerun the trial without prejudice to either party.

(vi) The admission or proposed admission and effect of fresh evidence.

[85] *Blackstone's Criminal Law & Practice 2026* refers at D12.46. Also, *Archbold 2026* at 7-111 refers to the fact that where a conviction is quashed following serious police misconduct, the court should eschew a disciplinary approach. *R v Akle (Ziad)* [2021] EWCA Crim 1879 is the most recent authority we have read. In that case where misconduct was found following a Serious Fraud Office prosecution, the court held that the interests of justice did not require a retrial; the key considerations were that there was fault by the prosecutor and that a retrial would inevitably involve substantial delay for a man in poor health who had already spent a significant time in prison which was unusually difficult due to the Covid-19 pandemic.

[86] We have also been referred to *Pandray v Virgil* [2008] UKPC 24, where a defendant who had properly been brought before a criminal court had his conviction quashed on grounds of bias in the trial court. However, it was decided that there was no reason why a retrial should not be ordered provided it would be possible to have a fair trial before a different tribunal.

[87] Of course each case is fact specific. However, the overarching principle is clear namely that the court has a discretion to order a retrial following the quashing of a conviction on appeal if it appears to the court that the interests of justice so require pursuant to section 6 of the 1980 Act (and the identical provision in England & Wales).

[88] In *R v Maxwell* [2011] 1 WLR 1837 Lord Dyson observed.

“[18] It is noteworthy that Parliament has not specified any of the factors that the Court of Appeal may (or indeed may not) take into account when deciding whether or not to order a retrial. Instead, Parliament has propounded a broad and uncomplicated test and has entrusted to the good sense of the Court of Appeal the task of deciding whether the interests of justice require a retrial, having regard to all the circumstances of the particular case. That is hardly surprising since the Criminal Division of the Court of Appeal is a specialist criminal Court whose judges have considerable experience and expertise in criminal procedural and substantive law.

[19] The interests of justice is not a hard-edged concept. A decision as to what the interests of justice requires calls for an exercise of judgment in which a number of relevant factors have to be taken into account and weighed in the balance. In difficult borderline cases, there may be scope for legitimate differences of opinion. [such] a decision ...

calls for an exercise of judgment which should only be upset on appeal if it was plainly wrong in the sense that it is one which no reasonable court could have made or if the court took into account immaterial factors or failed to take into account material factors. It seems very likely that the reason why there has been no other appeal to the House of Lords or Supreme Court from [such] a decision ... is because of the expertise that the Court of Appeal has in deciding questions such as whether the interests of justice require a retrial and the difficulty of challenging such decisions on appeal."

[89] In deciding on this aspect of the appeal, we remind ourselves of the central issue in this case which was the mental state of the appellant at the relevant time. Self-evidently the expert evidence played a crucial role. It is also uncontentious, as we have outlined above in our judgment, that:

"... Dr Bunn's evidence was not evidence that a jury could rely on in a case of this nature."

"... as a result of prosecutorial misconduct Dr Bunn was simply aligning himself with the central pillars of the prosecution case based on matters which before the trial were of no or marginal consequence to Dr Bunn as an expert and absent from his reports."

[90] Ultimately, the court must conduct a balancing exercise between the public interest in favour of a retrial and the appellant's legitimate interests. The prosecution submitted that the former should prevail given the seriousness of the charges. Also, the prosecution relied upon the fact that only part of the sentence has been served and that the appellant's age does not militate against a retrial. Furthermore, the prosecution submitted that the abuse of process issue which arose in *Pandray v Virgil* [2008] 1 AC 1386 does not arise here. Therefore, the prosecution invited the court to order a retrial and to consider admitting the appellant to bail on conditions pending that retrial.

[91] On behalf of the appellant, it is argued that the trial could not be rerun without prejudice to her given the inadequacy of the prosecution case and the misconduct now identified. Also, it is contended that a retrial would cause her significant stress and traumatisation. Furthermore, the point was made that, from the prosecution submissions, they intended not only to obtain further psychiatric evidence but also to take issue with the essential ingredients of the offence of infanticide. The defence therefore argued that on the face of it if a retrial is ordered the prosecution would be getting a second bite of the cherry which is unfair.

[92] We have considered the competing arguments. In doing so we have well in mind the public interest in the prosecution of what are undoubtedly serious charges. We also bear in mind that the discretion to order or refuse a retrial is to be exercised in the interests of justice and not as a form of disciplinary sanction for prosecutorial misconduct. However, there are two issues which have not been fully addressed as they only arose during final exchanges with the court. The first is whether there could in fact be a successful retrial given that Dr Bunn's evidence would have to be excluded. An obvious difficulty presents itself given that the revenge hypothesis is embedded in the papers and, due to the history of this case, it may be impossible for any new expert to avoid contamination once they read their instructions and the documents in this case. This engages the question of prejudice. We think that the prosecution needs to address this issue at a senior level within the PPS. The second issue is the effect on the appellant's mental health of a retrial. This may require the defence to obtain a medical report.

[93] We are willing to allow the prosecution and defence time to address both these matters before we reach a final decision on retrial. A pause will also allow both parties to reflect upon the substance of our judgment.

Overall conclusion

[94] Accordingly, for the reasons we have given, we cannot be satisfied that the convictions on counts 1 and 2 are safe. We allow all three grounds of appeal. We, therefore, quash both convictions. We will hear counsel as to the time needed to address the question of whether it is in the interests of justice to order a retrial and any other issues that arise.

Postscript - 20 March 2026

[95] We are grateful to counsel for their assistance this morning on the remaining issue in this case. We will provide a ruling of the court on the retrial issue today. We do so, noting at the outset, that this court has provided a comprehensive judgment quashing the convictions of this appellant for murder and attempted murder. In the body of that judgment this court has referred to prosecutorial misconduct allied to improper expert evidence. The remaining issue is whether the court should order a retrial. To that end, we allowed the defence and prosecution to obtain some further medical evidence about the effect of a retrial on the appellant and to file legal submissions given the issues that we raised in our judgment.

[96] We have considered the new material including the reports of Dr Brennan and Dr Browne which contain contrary positions on the effect of a retrial on the appellant. That poses a difficulty for an appellate court as we are not a fact-finding court. We note that neither counsel has advanced the points arising from these reports probably for that reason.

[97] The law on whether this court should order a retrial is well-trammelled in the cases that both counsel have referred to. Specifically in *R v Maxwell* [2010] UKSC 48, the Supreme Court described the test as “broad and uncomplicated.” It is ultimately whether it is in the interests of justice to order a retrial and that is a matter of judgment for the Court of Appeal. We also take from the *Maxwell* case that the court should not decline to reorder a retrial for the purposes of disciplining the prosecution.

[98] The outcome of an application for a retrial depends on consideration of all the circumstances of a particular case. As we have already said this is a unique case, on its facts and because of how the trial was conducted. That is why we have taken some time to consider the issue of a retrial, and we have reflected on the material before us today and what has been said.

[99] There are factors raised by the defence and the prosecution in support of their respective positions on the question of retrial. The prosecution is firmly in favour of a retrial, the defence against. We will not recite the factors which are well set out in the arguments, but we have considered all of them.

[100] Having done so, in our judgment, the public interest prevails in favour of a retrial given the serious charges of murder and attempted murder which attach to this case. This prevails in the balance over the other issues namely the misconduct that we have referred to, the time already served by the appellant, the delay and the appellant’s vulnerability. Hence, we consider that a retrial should be ordered.

[101] That is not the end of the matter, however, given the legal issues that arise in this case. There are matters as the prosecution points out in its skeleton argument that require ongoing consideration. First, is the ongoing duty of the prosecution to apply the two-stage test for prosecution in this case as in any other case. Second, is the trial judge’s power to exclude evidence if he or she sees fit on grounds of fairness and relevance. Third, is the trial judge’s power to stay proceedings if a fair trial is not possible. Fourth, special measures can be applied to assist the appellant and ameliorate any distress from the retrial. In addition, we note the prosecution undertaking not to rely on the evidence of Dr Bunn.

[102] The above matters and any other issues that may arise can all be canvassed before the trial judge. The trial court is well placed to deal with matters which will inevitably arise.

[103] We see no reason why the retrial should not proceed immediately and observe that it may have to be as an exempted case given current circumstances. To that end, we are going to direct a retrial in the exercise of our discretion but also give some further directions as follows:

- (i) The matter should be listed for review and timetabling before the Senior Criminal Judge Madam Justice McBride at Laganside Court, on Friday 1 May.

- (ii) Short position papers should be filed by both the prosecution and the defence by 12 noon the day before.
- (iii) The letter of instruction to Dr Kennedy should as far as possible be on a blank page basis to avoid any unfairness to the appellant given what has arisen in relation to the previous expert evidence. The letter of instruction must be sent by Monday, and the report must be filed by 30 April 2026.
- (iv) The arraignment should be within two months which is within the period that we have set for the review.
- (v) Finally, a copy of our judgment in this case will be made available only to the legal representatives and the trial judge subject to any other application.

[104] This ruling that we have just given will be a postscript to the original judgment which will now be finalised and circulated to the parties but embargoed until the retrial takes place save that this outcome can be reported within the parameters of the current reporting restrictions which also remain in place.