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(subject to editorial corrections)

IN THE HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

v

CHARLES MALACHY OLIVER POLLOCK

Before Kerr LCJ, Campbell LJ and Higgins J

KERR LCJ

Introduction

[1] This is an application by Charles Malachy Oliver Pollock for leave to appeal against his conviction on the charge of murder of Norman William Thompson on 19 August 2000. The applicant had been tried on an indictment containing five counts. Apart from the charge of murder, the other counts were: - causing death by dangerous driving; driving whilst disqualified; using a motor vehicle without insurance; and manslaughter.

[2] On 21 September 2001 the applicant pleaded guilty to the charges of driving whilst disqualified and driving without insurance. On 16 November 2001 he pleaded guilty to causing death by dangerous driving and was tried on the charge of murder between 13 May 2002 and 21 May 2002. In the course of that trial on 20 May 2002, the charge of manslaughter was added to the indictment and the applicant pleaded guilty to that charge. The jury failed to agree on a verdict on the charge of murder and the applicant was tried again on that charge before Coghlin J and a jury between 17 September and 24 September 2002. He maintained his plea of not guilty to murder but was convicted by majority verdict (10 jurors for conviction and two against) at Belfast Crown Court on 24 September 2002.

[3] On 19 December 2002 Coghlin J sentenced the applicant to life imprisonment on the charge of murder and ordered that the release

provisions under article 5 of the Life Sentences (Northern Ireland) Order 2001 should not operate for a period of ten years. In other words, he imposed a tariff of ten years. The judge, quite properly in light of the applicant's conviction on the charge of murder, did not pass a sentence on either of the charges of causing death by dangerous driving or manslaughter. On the third count of driving while disqualified the applicant was sentenced to six months' imprisonment and disqualified from driving for twenty years. He was fined in respect of the last count.

Factual background

[4] On 19 August 2000, Detective Constable Aidan Pounder was on duty with Constable Henderson in the Woodbourne area of Belfast. At about 1.20 am they saw a blue Renault 19 emerge from a side road into the path of the police vehicle. They pursued the vehicle as it travelled in a countrywards direction on the Colinglen Road. The police activated the two-tone horns and flashed the headlights of their car in an effort to get the driver of the Renault to stop. This was not successful. At one stage the police vehicle drew alongside the Renault and Detective Constable Pounder signalled with his police torch at the driver to stop but this was ignored.

[5] Various other police officers took up the chase of the Renault vehicle or were involved in monitoring its movements. It was also observed from an aircraft of the Police Air Support Unit and its path was tracked from the junction of the Colinglen and Brianswell Roads to Dunmurry Lane and on to the M1 motorway. It was seen to travel at high speed along the motorway and to emerge at Stockman's Lane exit and turn left on to Kennedy Way. As the car travelled along Upper Kennedy Way it was seen from the helicopter to veer to the right. One of the observers in the aircraft, Detective Constable Noel Walker considered at first that the driver might have lost control at that point but he then saw the car straightened "in a controlled manner" and return to the proper side of the road.

[6] Another police officer in the aircraft, Detective Constable Ivan Simpson, observed the progress of the car on the screen of a thermal image camera. He also saw the car veer right on Upper Kennedy Way on to the wrong side of the road and he thought that he saw it hit someone.

[7] Sergeant Glenn Willis, Constable Kenneth Anderson and Reserve Constable Norman Thompson were on patrol in a police landrover in the Andersonstown area in the early hours of 19 August. They were in Andersonstown Park West when they heard radio transmissions about the vehicle that was refusing to stop for police. Andersonstown Park West is separated from Upper Kennedy Way by a chain link fence and hedging but it was possible to get to Upper Kennedy Way through gaps in the hedge. The police officers heard the car approach at high speed and R/Constable

Thompson alighted from the landrover, taking with him a 'stinger', a device used to throw in the path of a car in order to deflate the tyres.

[8] As R/Constable Thompson threw the stinger across the road in front of the Renault car, it veered on to the side of the carriageway that he was on and collided with him. He was thrown through the air by the force of the collision, sustaining massive injuries. He died a short time later. Sergeant Willis did not see the impact, although he was able to see R/Constable Thompson being propelled through the air. Just before that he had heard screeching noises that he believed had been caused by car tyres.

[9] After the collision the car was seen to return to the correct side of the road. It then continued on to the Monagh By-Pass and thence to Springfield Road and eventually to Divismore Park where it came to a halt. The thermal imaging camera revealed three heat sources alighting from the car. The movements of the three individuals represented by the heat sources were monitored until they were seen to enter a house later established as 35 Ballymurphy Drive. Police were then directed to that location.

[10] When police officers entered the house they found the applicant with another man in an upstairs room. Although he was able to give police his name and address, when he attempted to rise from a bed on which he was lying, the applicant fell back on to it because of his heavily drunken condition. He was arrested at that address and taken into police custody.

[11] During the first five interviews the applicant repeatedly denied that he had been driving the car that struck R/Constable Thompson. Those who had said that he was the driver he accused of being 'liars'. In the sixth interview he admitted that he had been the driver and claimed that he had tried to swerve round the policeman and the stinger. He alleged that he had gone on to the wrong side of the road to avoid the stinger and had attempted to mount the kerb. He accepted that he knew that there had been an impact but claimed that he did not know that this had involved the police officer. He suggested that he thought it might have been some object that the police officer had thrown at the windscreen such as a torch.

[12] On the applicant's trial, Daniel David Oxlee gave evidence for the prosecution. He is an imagery analyst and he carried out an analysis of the recording made by the airborne thermal imager that recorded the incident. Mr Oxlee told the court that the car had travelled at speeds in excess of 100 mph on the motorway and that at the time of the impact with R/Constable Thompson it was travelling at 66 mph. He would have expected to find evidence on the recording of the car having braked or swerved violently but there was none. From his observation of the tape Mr Oxlee came to the conclusion that the police officer took one or two steps back after deploying the stinger and that he was standing still at the time that he was struck by the

car. Under cross-examination he stated that his estimate of the time that elapsed between the car moving to the right and it striking the police officer was 1.25 seconds. He also confirmed that, although the police officer would have been visible to the driver of the car for some distance before the stinger was thrown across the road, the car did not move to the right until the stinger was deployed. After the car had moved to the right but before the collision it moved slightly to the left. This brought it into a collision course with the police officer. On the course that it had first taken after veering to the right it would not have struck R/Constable Thompson.

[13] The Renault 19 motor car driven by the applicant was subsequently examined and it was established that the area of impact was to the nearside front in the area of the headlamp. A deep concave indentation in the leading edge of the bonnet was found. The windscreen had sustained a severe impact that was in line with the damage to the bonnet.

The appeal

[14] For the applicant Mr G A Simpson QC did not criticise the learned trial judge's conduct of the trial or his charge to the jury. He advanced two principal submissions in support of the applicant's application for leave to appeal. First he claimed that the prosecution had wrongly exercised its power to stand by potential jurors by excluding those who lived in the area where the incident had taken place; those who lived near the applicant's or his mother's home; and those who lived near witnesses in the case. This was, he said, an unwarrantable interference with the randomness of jury selection. Secondly, Mr Simpson argued that the jury verdict was unsafe. He suggested that no reasonable jury could confidently exclude the possibility that the applicant did not intend to kill the police officer or to cause him grievous bodily harm.

[15] For the prosecution Mr Kerr QC submitted that the purpose of stand by decisions of the Crown was to prevent jurors being impanelled who came from the same area as that where the events took place or from the area where the applicant's mother lived. As it happened, the incident occurred in the area where the applicant's mother lived. Only persons from that area were excluded. He argued that this was a perfectly legitimate exercise of the Crown's power to stand by jurors. The type of incident that the applicant had been involved in was likely to give rise to significant feeling among residents of the area. It was important that the prospect of an impartial verdict be not imperilled by the inclusion on the jury of someone who might share those feelings.

[16] On the safety of the jury's verdict Mr Kerr contended that there was ample evidence on which the jury could properly conclude that the applicant intended to kill or cause grievous bodily harm to R/Constable Thompson.

Although he was heavily intoxicated, the applicant had driven for some seven miles before encountering the police officer. His driving throughout that distance suggested that he was well able to control the car. He had not braked heavily or swerved sharply before the collision and had continued to drive in a controlled manner after it. The jury was entitled to have regard to these matters in deciding whether the veering towards the police officer indicated a deliberate intention to strike him with the car. Moreover, Mr Kerr pointed out, the applicant had failed to give evidence and the jury was entitled to infer that this was because he was unable to offer a plausible reason for driving towards the police officer other than that he intended to strike him.

Jury stand by

[17] This subject was considered extensively by this court in *R v Gribben* [1999] NIJB 30. As the court there observed, challenges in criminal cases are governed by article 15 of the Juries (Northern Ireland) Order 1996, which provides: -

> "15.—(1) A person arraigned on indictment may challenge—
>
> (a) not more than twelve jurors without cause; and
>
> (b) any juror or jurors for cause
>
> (2) The prosecution shall challenge only for cause.
>
> (3) Any challenge to jurors for cause shall be tried by the judge before whom the accused is to be tried.
>
> (4) The judge may at the request of the Crown, but not of a private prosecutor, order any juror to stand by until the panel has been gone through."

[18] In *Gribben* this court held that the Crown was not obliged to give reasons for asking the judge to stand by a juror. It held that "in giving the Crown a right to require the judge to exercise [the power of ordering jurors to stand by] without giving reasons the court is relying upon the integrity and sense of responsibility of those who exercise the right on behalf of the Crown to do so in a proper fashion". The court nevertheless expressed the view (with which, we may say, we wholly agree) that the judge retained the power to intervene to question the Crown's stand by request where it considered that this was being used in an improper fashion.

[19] Mr Simpson argued that the use of the stand by power to exclude residents "of an entire area" was improper. He relied on an observation by Lord Lane CJ in *R v Ford* [1989] Q.B. 868, 871/2 where he said: -

> "At common law a judge has a residual discretion to discharge a particular juror who ought not to be serving on the jury. This is part of the judge's duty to ensure that there is a fair trial. It is based on the duty of a judge expressed by Lord Campbell C.J. in *Reg. v. Mansell* (1857) 8 E. & B. 54 as a duty "to prevent scandal and the perversion of justice." A judge must achieve that for example by preventing a juryman from serving who is completely deaf or blind or otherwise incompetent to give a verdict.
>
> It is important to stress, however, that that is to be exercised to prevent individual jurors who are not competent from serving. It has never been held to include a discretion to discharge a competent juror or jurors in an attempt to secure a jury drawn from particular sections of the community, or otherwise to influence the overall composition of the jury. For this latter purpose the law provides that "fairness" is achieved by the principle of random selection."

[20] We do not consider that Lord Lane was here seeking to restrict the legitimate use of the stand by power to cases where particular individuals had some specific ineligibility. Rather he was expressing the entirely unexceptionable view that this power should not be used to exclude an entire category of persons such as an ethnic minority. But where a group of people (such as the residents of an area where a crime took place) might reasonably be apprehended to have preconceived views about the crime that the defendant was charged with, then there is nothing untoward in exercising the stand by power to exclude such persons from the jury.

[21] Mr Simpson also relied on the decision of the Court of Appeal in *R v Tarrant* [1998] Crim LR 342 where the judge had ordered that there should be no jurors summoned who had an East London postal address. By an unfortunate concatenation of circumstances this instruction led to the empanelling of a jury from "Essex and places like Romford" who happened to be available from a nearby court. Unsurprisingly, the Court of Appeal found that this device (while resorted to for laudable reasons *viz* to avoid intimidation of witnesses) destroyed the random nature of proper jury selection. There is no reason to suppose in the present case that the

randomness of jury selection has been impaired. On the contrary, the elimination of those who may have pre-conceived views about the crime enhances the purpose of random jury selection which is the trial of the accused person by a wholly independent and impartial jury.

[22] In this context it is relevant that the policy pursued by the Crown in the use of the stand by power was in line with instructions contained in the Departmental Handbook issued by the Department of the Director of Public Prosecutions. At chapter 11.4 it states: -

> "Standing by jurors
>
> The right of stand by will be exercised only for the purpose of securing a fair trial by a jury composed of competent and impartial jurors. With a view to the empanelling of such a jury, and the exercise of the right to stand by in aid of this, the representative of the Crown should have regard to the presence or possible presence on the jury panel of persons who are not or may not be competent or impartial including:
>
> ….
>
> e. Persons living in the immediate neighbourhood of the defendant or a Crown witness
>
> f. Persons from an area where there is strong local prejudice about the case".

[23] We were told that the Crown anticipated that people living in the area where this offence took place would have strong feelings about it. That suggestion was not challenged by the applicant. It seems to us that those who entertain such feelings would plainly be unsuitable as members of the jury. We can find nothing wrong (and much that is right) about the Crown's decision to exclude them. The applicant's first ground of challenge must fail.

The safety of the jury's verdict – the principles to be applied

[24] Section 2 (1) of the Criminal Appeal (Northern Ireland) Act 1980 provides that the Court of Appeal shall allow an appeal against conviction if it thinks that the conviction is unsafe and shall dismiss such an appeal in any other case. Until 1995 this section provided that an appeal lay on grounds: (a) that the verdict was unsafe or unsatisfactory; (b) a wrong decision had been reached on a question of law; or (c) there had been a material irregularity in the course of trial; with the proviso that an appeal might be dismissed if no

substantial miscarriage of justice has occurred. These various grounds were replaced by the simple formula that the Court of Appeal should allow the appeal "*if it thinks that the conviction is unsafe*".

[25] Although the formulation changed in 1995, the jurisprudence relating to what is meant by 'unsafe' that preceded the change is still relevant. In *Cooper* [1969] 1 QB 267 the meaning of 'unsafe and unsatisfactory' was explained as follows: -

> "That means that in cases of this kind the court must in the end ask itself a subjective question, whether we are content to let the matter stand as it is, or whether there is not some lurking doubt in our minds which makes us wonder whether an injustice has been done. This is a reaction which may not be based strictly on the evidence as such: it is a reaction which can be produced by the general feel of the case as the court experiences it."

[26] A similar amendment to that introduced in Northern Ireland in 1995 was made in England in the same year and this was considered by the Court of Appeal there in *Graham* [1997] 1 Cr App R 302. Lord Bingham CJ said this of the new provision: -

> "This new provision, the subject of a penetrating analysis by Sir John Smith Q.C. in [1995] Crim. L.R. 920, is plainly intended to concentrate attention on one question: whether, in the light of any arguments raised or evidence adduced on appeal, the Court of Appeal considers a conviction unsafe. If the Court is satisfied, despite any misdirection of law or any irregularity in the conduct of the trial or any fresh evidence, that the conviction is safe, the Court will dismiss the appeal. But if, for whatever reason, the Court concludes that the appellant was wrongly convicted of the offence charged, or is left in doubt whether the appellant was rightly convicted of that offence or not, then it must of necessity consider the conviction unsafe. The Court is then subject to a binding duty to allow the appeal."

[27] But in the later case of *R v Pendleton* [2002] 1 WLR 72 (which was primarily concerned with the approach to be taken where fresh evidence had been received) Lord Bingham was careful to recognise that the changes

brought about in 1995 did not herald a two-tier system of trial – by jury at first instance and by the Court of Appeal on appeal. In that case he said: -

> "[17] My Lords, Mr Mansfield is right to emphasise the central role of the jury in a trial on indictment. This is an important and greatly-prized feature of our constitution. Trial by jury does not mean trial by jury in the first instance and trial by judges of the Court of Appeal in the second. The Court of Appeal is entrusted with a power of review to guard against the possibility of injustice but it is a power to be exercised with caution, mindful that the Court of Appeal is not privy to the jury's deliberations and must not intrude into territory which properly belongs to the jury."

[28] Lord Hobhouse in the same case cautioned against too interventionist a role for the appellate court. At paragraph 36 he said: -

> "Unless and until the Court of Appeal has been persuaded that the verdict of the jury is unsafe, the verdict must stand. Nothing less will suffice to displace it. A mere risk that it is unsafe does not suffice: the appellant has to discharge a burden of persuasion and persuade the Court of Appeal that the conviction *is* unsafe."

and at paragraph 37 he described the task of the Court of Appeal in addressing the question whether a jury verdict is unsafe in this way: -

> "'Unsafe' is an ordinary word of the English language. It connotes a risk of error or mistake or irregularity which exceeds a certain margin so as to justify the description 'unsafe'. It involves a risk assessment. Where the conviction results from a plea of guilty entered by the defendant, the circumstances in which the plea was entered are relevant. Where the conviction is after a trial, it is the trial and the verdict which are relevant. But, in my judgment it is not right to attempt to look into the minds of the members of the jury. Their deliberations are secret and their precise and detailed reasoning is not known. For an appellate court to speculate, whether hypothetically or actually, is not appropriate. It is for the Court of

> Appeal to answer the direct and simply stated question: do we think that the conviction was unsafe?"

[29] In a commentary on this decision in [2002] Crim. L.R. Sir John Smith posed (and answered) the following pertinent questions: -

> "Can a conviction be said to be "safe" if the court is persuaded that there is a real risk that the appellant may be not guilty? Is it safe if the court is left with "a lurking doubt" or "a reasoned and substantial unease about the finding of guilt"? It seems not. See Archbold (2002) at para. [749]."

[30] The equivalent passage from the current edition of Archbold also appears at paragraph 7-49 and is as follows: -

> "In *R. v. Farrow (Anthony Robin),* The Times, October 20, 1998, CA, it was said to be undesirable to place a gloss on the language used by Parliament, and that reference to the concept of a "lurking doubt" is inappropriate. Notwithstanding this observation, the Court of Appeal has continued to refer to this test: see, e.g. *R. v. Litchfield* [1998] Crim.L.R. 507. And in *R. v. Benton and Joseph* [2000] 7 Archbold News 2, Ct-MAC, it was said that the "lurking doubt" test, and an alternative formulation advanced in *R. v. Wellington* [1991] Crim.L.R. 543, CA ("whether we feel a reasoned and substantial unease about the finding of guilt"), are both acceptable and come to the same thing, 'Was the conviction safe?'"

[31] Sir John Smith in an earlier edition of the Criminal Law Review had asserted (in our view correctly) the continuing relevance of *Cooper* when he said: -

> "It is submitted that, in the circumstances of a case like *Cooper*, the law is unchanged. The court must still ask itself if it has a doubt, whether we characterise it as "lurking" or not, whether an innocent man has been convicted. What else can it do, unless *Cooper* has been overruled? These days, they call it "second-guessing" the jury; but, if *Cooper* was rightly decided, that is what the Court

can – and where it has a (lurking) doubt must – do." Crim. L. R. 1999, April, 306-307

[32] The following principles may be distilled from these materials: -

1. The Court of Appeal should concentrate on the single and simple question 'does it think that the verdict is unsafe'.
2. This exercise does not involve trying the case again. Rather it requires the court, where conviction has followed trial and no fresh evidence has been introduced on the appeal, to examine the evidence given at trial and to gauge the safety of the verdict against that background.
3. The court should eschew speculation as to what may have influenced the jury to its verdict.
4. The Court of Appeal must be persuaded that the verdict is unsafe but if, having considered the evidence, the court has a significant sense of unease about the correctness of the verdict based on a reasoned analysis of the evidence, it should allow the appeal.

The application of the principles to the present case

[33] The prosecution in the present case relied heavily on the driving pattern of the applicant both before and after R/Constable Thompson was struck. Although the applicant was considerably intoxicated and drove in a plainly dangerous fashion before the collision, it was suggested that he was able to maintain good lane discipline and that he had successfully negotiated a number of roundabouts before colliding with the reserve constable. The veering across the road towards the police officer was not, therefore, a loss of control on the part of the applicant, the prosecution said, but was a deliberate action on his part.

[34] The failure of the applicant to give evidence about what his intention was when he veered across the road left it open to the jury to conclude, the prosecution claimed, that he had indeed intended to collide with the police officer. The entire burden of the Crown case on the charge of murder, the applicant having pleaded guilty to manslaughter, was that he intended to kill or cause grievous bodily harm. Since he did not give evidence, it was neither surprising nor untoward, the prosecution submitted, that an adverse inference was drawn against him on the question of his intention at the critical time.

[35] For the applicant it was contended that the time interval between the car beginning to veer to the right and it striking R/Constable Thompson made it impossible to be certain that he had intended to kill or cause grievous bodily harm. A far more likely explanation was that proffered by the applicant *viz* that he was trying to avoid the stinger by swerving behind the police officer.

[36] The task that this court must perform in adjudicating on these arguments is one of some subtlety. On the one hand, it must not retry the case and must decide whether it has been persuaded that the verdict is unsafe. Its task is to *review* the jury verdict rather than to second-guess it. On the other hand, if the court feels substantial unease about the safety of the conviction, it should allow the appeal. The decision whether the court feels unease about the verdict inevitably involves the application of a subjective judgment and while that may fall short of retrying the case, it must partake of such an exercise to some extent at least. In carrying out this task, the court must, as it seems to us, take into account that the trial judge did not withdraw the case from the jury at the close of the prosecution. That circumstance cannot, however, be determinative of the outcome of the application for leave to appeal.

[37] In *R v Galbraith* [1981] 1 WLR 1039 it was held that that a judge should withdraw the case from the jury where he comes to the conclusion that the prosecution evidence, taken at its highest, was such that a jury properly directed could not properly convict on it. The Court of Appeal in *Galbraith* was careful to warn that where there was evidence whose reliability fell to be assessed by the jury, it would not be right to stop the case, whatever view the judge had formed of it. At page 1062, Lord Lane CJ said: -

> "Where however the Crown's evidence is such that its strength or weakness depends on the view to be taken of a witness's reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there *is* evidence on which a jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury."

[38] It might be argued that, on this formulation, where a trial judge harbours misgivings about the safety of a possible finding of guilt by the jury he must nevertheless allow the case to proceed where its outcome depends on the jury's view of the reliability of the prosecution evidence. Whether that argument is correct or not, however, the judge's view as to whether the case should be allowed to go to the jury cannot bind the Court of Appeal in its *post hoc* evaluation of the safety of the verdict.

[39] What the jury required to be convinced of (*i.e.* to be satisfied of beyond reasonable doubt) was that the applicant intended to inflict fatal or really serious injuries on the police officer. Self evidently it had no direct evidence of that intention. It was obliged to deduce from the available objective material (in the form of the description of the driving of the car) and the failure of the applicant to give evidence what his real intention was. To arrive

at a verdict of guilt the jury was required to wholly dismiss as a possibility that the applicant did not intend to hit the policeman but was trying to avoid the stinger.

[40] While the course that the car took in veering towards the police officer may clearly indicate deliberation on the part of the driver, this is not inexorably indicative of an intention to kill or cause grievous bodily harm. Indeed, the applicant accepted in interview that he did indeed deliberately swerve the car. What was at issue was his purpose in doing so. The prosecution claims that it was to strike R/Constable Thompson. The applicant claims that it was to avoid the stinger.

[41] In the space of 1.25 seconds a number of things occurred:

1. The car, travelling at 66mph, altered its course when the stinger was thrown across its path; although the policeman was visible to the driver well before the change in direction occurred, there was no attempt to steer towards him before the stinger was deployed;
2. At some point after the car had altered its course the officer straightened or stepped back;
3. Some time into the period of 1.25 seconds the car moved slightly to the left thereby bringing it into line with R/Constable Thompson;
4. The nearside of the car struck the police officer.

[42] We must begin our examination of the safety of the verdict (and our analysis of the evidence that this demands) by acknowledging that the events that led to the constable being struck occurred in less than one and a half seconds. We must also recognise that, if the applicant conceived an intention to strike the officer with the car, it is highly probable that he intended to kill. We say this because the car was travelling at 66 mph at the time of collision. To deliberately aim a car at a person at that speed the driver must have known that the virtually inevitable consequence was that he would be killed.

[43] With these considerations in mind, we have asked ourselves, why in that split second before the collision, would the applicant have suddenly decided to kill or, at the very least, maim the police officer. Why did he not steer directly towards him when he first veered to the right? Why, indeed, did he first veer on to a course that would have taken him to the rear of the officer? We have also asked ourselves whether, if the applicant deliberately aimed his car at the police officer, it is not more likely that the damage to his vehicle would have been to the front centre of the car rather than concentrated to the nearside. We have given careful consideration to the explanation that the applicant himself has proffered (that he wanted to avoid both policeman and stinger) and we have asked ourselves whether there is a reasonable possibility that this could be true.

[44] The driving of the applicant in the early hours of 19 August 2000 was nothing short of outrageous. It has had calamitous consequences for the family of R/Constable Thompson, a police officer prepared to face considerable risk to himself in an effort to curb the disgracefully criminal conduct of the applicant. The inevitable indignation that any right thinking person would feel at this wanton behaviour must not, however, distract this court from the dispassionate examination of the evidence that it is required to undertake in order to decide whether the verdict of the jury can be considered safe.

[45] After much anxious consideration each of the members of this court has come to the conclusion that he could not be sure that the applicant's intention was to collide with the police officer. We find it impossible with the level of certainty necessary to support a conviction for murder to exclude the possibility that the applicant had been trying to avoid the stinger, rather than deliberately strike the officer. Because of the sense of unease that we have been left with after repeatedly scrutinising and assessing the evidence, it is our duty to declare the verdict of the jury unsafe. In reaching that conclusion the court is conscious that the circumstances in which a jury verdict should be set aside where there has been no challenge to the manner in which the trial was conducted must be wholly exceptional. But the court has a solemn obligation to examine the verdict conscientiously to see whether it "thinks that the conviction is unsafe". Having done so, this court has concluded that the verdict cannot be allowed to stand.

Conclusions

[46] The application for leave to appeal against the conviction is therefore granted. We allow the appeal and quash the conviction on the charge of murder. The case will be remitted to the trial judge for sentence on the charge of manslaughter.