Neutral Citation Number: [2020] EWCA Crim 589

Case No: 201804430 B3

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM MANCHESTER CROWN COURT
MR JUSTICE McCOMBE
T20047404

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 01/05/2020

Before :

PRESIDENT OF THE QUEEN'S BENCH DIVISION

MR JUSTICE SWEENEY

and

MRS JUSTICE MAY DBE

- -

Between :

GORDON PARK (DECEASED)	**Appellant**
- and –	
REGINA	**Respondent**

- -
- -

Henry Blaxland QC and David Emanuel QC (instructed by **Hadgkiss Hughes & Beale**) for the **Appellant**
Richard Whittam QC and Louise Oakley (instructed by **CPS**) for the **Respondent**

Hearing date: 5 November 2019

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Approved Judgment

The Honourable Mr Justice Sweeney:

Introduction

1. On 28 January 2005, at the conclusion of a two-month trial in the Manchester Crown Court before McCombe J (as he then was) and a jury, the appellant (then aged 61) was unanimously convicted of the murder of his (then) wife Carol Park ("CP") some 28 ½ years previously, in the summer of 1976. He was sentenced to life imprisonment with a minimum term of 15 years.

2. His renewed application for permission to appeal against conviction was refused by the full Court in November 2008.

3. On 25 January 2010, which was his 66th birthday, the appellant committed suicide in HMP Garth.

4. The case has since been examined by the Criminal Cases Review Commission ("CCRC") following an application made by the appellant's widow, Jennifer Park, in written Representations dated 17 August 2010.

5. On 26 October 2018 the CCRC referred the conviction to this Court under section 9 of the Criminal Appeal Act 1995. The then Vice-President of the CACD, Hallett LJ (as she then was), gave permission, pursuant to section 44A of the Criminal Appeal Act 1968, for the appellant's son, Jeremy Park, to continue the appeal.

Factual background

6. CP went missing from the matrimonial home, a bungalow called 'Bluestones' in Leece, near Barrow-in-Furness ("Barrow"), on Friday 16 July 1976 or Saturday 17 July 1976. She made no contact with anyone after that time.

7. The appellant and CP were born in January 1944, and December 1945, respectively. CP was adopted by the Price family, and thus had an older brother, Ivor Price, and a younger sister, Christine Price. The appellant and CP first met as teenagers in 1962/3 and were married in August 1967. They had three children: Vanessa (born in March 1968), Jeremy (born in March 1970) and Rachael (born in May 1971) who were aged 8, 6 and 5 respectively at the time of their mother's disappearance. The elder daughter, Vanessa, was adopted, being the daughter of CP's sister Christine, who had been strangled to death in April 1969 by her boyfriend, John Rapson, who was sentenced to life imprisonment for her murder.

8. Between about 1972 and 1975 the appellant and CP experienced significant marital difficulties. Both formed relationships with other people, and in 1974 CP had moved away from 'Bluestones' - first to live at a local guesthouse and then to live with a man called David Brearley in Cleveland.

9. CP had thereafter begun proceedings for custody of all three children. However, in March 1975, in the Middlesbrough Magistrates' Court, custody was awarded to the appellant

(who, it later transpired, had lied to the court in evidence to cover up an affair with a Mrs Walmsley).

10. After treatment for depression, CP returned to 'Bluestones' in August 1975 - where she remained until her disappearance. During that period, she gave no indication that she was unhappy, was seeing anybody else or was intending to leave again. In 1976 both CP (by then aged 30) and the appellant (by then aged 32) were working as teachers. She spoke enthusiastically to work colleagues towards the end of the summer term (which ended on Friday 16 July 1976) about a planned family trip to Blackpool during the school holidays and her work as a teacher in the new term which was due to start in early September 1976. Various friends, neighbours and colleagues recalled the Park family talking about a planned trip to Blackpool on Saturday 17 July 1976.

11. There was no formal record of CP having been at work on Friday 16 July 1976, which was the last day of term. On what was possibly that Friday, CP visited her sister-in-law, Maureen Price, and her niece Kay Price, at their home in order to pay in some 'Christmas Club' money. During the visit, CP said that she would bring Kay a birthday card and a present on the Sunday.

12. One of the Parks' neighbours, Mary Robinson, recalled that at the start of the summer holidays, possibly in the morning of Saturday 17 July 1976, she had spoken with CP, who had been relaxed, relieved that term was over and looking forward to going on holiday.

13. On Sunday 18 July 1976 Malcolm and Angela Short, who were friends of the Parks, visited 'Bluestones' unannounced. The appellant spoke to them outside and told them that the previous day he had taken the children to Blackpool; that CP had not been well and had stayed at home in bed; and that when he and the children had returned, she had not been there. Angela Short recalled the appellant saying that CP had not taken her handbag and purse, and Malcolm Short recalled that the appellant had invited them inside but that they had declined.

14. After CP's disappearance, the appellant continued to look after the children, but did nothing at all to try to find out what had happened to CP.

15. On Thursday 2 September 1976, which was the first day of term, CP failed to attend for work at her school. It was not until Saturday 4 September 1976, that the appellant informed CP's brother, Ivor Price, that he had not heard from her for six weeks. After that, the appellant had reported to the police that CP was missing – stating that there had been no sign of forced entry or struggle at ''Bluestones'' when he and the children had returned from Blackpool on Saturday 17 July 1976, and (albeit that he said that he was unsure) that she had not taken any money or clothes.

16. The police began a missing person investigation, during the course of which the appellant made a witness statement to DI Williams. Ultimately, the investigation established that, after her disappearance, CP had neither contacted, nor been seen by, any family or friends, and that she had not withdrawn any money from the couple's joint bank account, or her own account(s).

17. In November 1978, the appellant petitioned for divorce from CP on the ground of desertion. The divorce was granted in August 1979. In the early to mid-1980s the appellant

was married briefly to Catherine Sillars. He continued to live at 'Bluestones' until the early 1990s, when he married Jennifer Park, and they moved to 34 Norland Avenue in Barrow.

The discovery of CP's body and the subsequent criminal proceedings

18. On Saturday 10 August 1997 (21 years after CP had disappeared) amateur scuba divers noticed what appeared to be a bag resting on silt some 24 – 27 metres down at the bottom of Coniston Water, in the Lake District (around 20 miles from Leece), at a distance of about 200 metres from a beach on the eastern shore near Bailiff Wood. The bag was close to a steep drop into water over 50 metres deep. On Tuesday 13 August 1997, the divers returned, raised the bag and brought it to shore. On realising that it contained human remains, they called the police.

19. The remains proved, by reference to her dental records, to be the badly decomposed body of CP. She was dressed in a short nightdress and was elaborately bound, using around 20 feet of rope and string, which was tied and bound to her right shoulder blade, wrapped around her body at least three times, and tied with various complicated knots, into a foetal position. The body was enclosed within several layers of different materials. First, a plastic bin liner over the bottom half, and another over the top half, then a green nylon rucksack with padded straps (Exhibit 29) over the bottom half - all of which had then been put into a man-made sack fashioned by sewing up a black pinafore dress (identical to one depicted in photographs of CP taken whilst she was alive). The package had been weighed down by a flattened piece of lead pipe (consistent with having originally been the pipe from a high cistern lavatory) which had been folded over several times to form a mass 12" in length and 6.4kg in weight, and was attached by rope to the middle of the body.

20. Two post mortem examinations were conducted by Dr Edmund Tapp, a Consultant Forensic Pathologist and Home Office Pathologist, who ultimately gave evidence for the prosecution. The examinations revealed that the head and neck were skeletonised and that the bones had separated from the rest of the body. The vertebrae from the neck, together with a large number of small bones from the hands, fragments of the upper jaw and 18 teeth were collected from the plastic bin liner which covered her top half, along with a piece of strapping and two pieces of elastic/plaster material – one of which transpired to be a medical dressing which had originally been put across CP's eyes. Dr Tapp concluded that there had been several impacts (either kicks or blows from a heavy blunt object, such as an axe or chopper) to CP's face – with, on reconstruction, the appearance of the teeth and left zygoma suggesting that the object had a sharp edge. The central part of CP's face had been destroyed by at least two blows from the object in a downward direction. There were also possible defensive injuries to the small bones of CP's left hand, near to her wrist. With the exception of the head, neck, hands, and lower forearms the overall structure and integrity of the body had been retained due to the formation of adipocere in the soft tissues.

21. The appellant was arrested on 24 August 1997. Various intricately knotted ropes, some of which were old and dated back to the appellant's time at 'Bluestones', were recovered. In interview, on 24 & 25 August 1997, the appellant denied murdering CP. He described their marital problems but said that he was not aware of any issues in July 1976. He said that his recollection of the trip to Blackpool with the children on the date of his wife's disappearance in July 1976 was now vague, but that the detailed statement that he had

given to police back in 1976 (which, along with the relevant missing person file, had since been lost by the police) would have been accurate.

22. The appellant was charged with CP's murder on 25 August 1997 and was remanded in custody to HMP Preston from 26 August to 9 September 1997 - after which he was released on bail.

23. Police divers carried out searches in Coniston Water on 10 September 1997 (when PC Brookes found some female footwear and a small red dress) and on 30 September 1997 (when, at a depth of around 12 metres, and at a point roughly between where the body had been found and the shore), PC Brookes found female clothing dating from the mid-1970s and some cosmetics from the same period - which he placed into a bag the contents of which were placed into another bag, which was then sealed and which, when opened on 4 October 1997, was found to contain both the clothing and a rock – which we refer to hereafter as "the rock".

24. On 11 September 1997 Dr William Lawlor, a Home Office Pathologist instructed by the defence, conducted a third post mortem examination.

25. At the Coroner's Inquest on 22 September 1997, Dr Tapp opined that the "*most likely cause of death*" was facial injuries caused by blows with a heavy sharp object which had resulted in upper respiratory obstruction, or in drowning of the lungs with the inhaled blood, via the destruction of the nasal and other facial bones, and that an axe or chopper could have been used. Dr Tapp also opined that the position of the body, coupled with the process of adipocere formation in the soft tissues, indicated that the body must have been tied up within 2-4 hours of death, before rigor mortis and putrefaction had set in. In contrast, Dr Lawlor opined that the cause of death was "*unascertained*" because the various post mortem changes precluded determination of the cause of death. Equally, whilst Dr Lawlor agreed that only direct blunt force trauma could have caused the significant injuries to the lower maxilla, he concluded that there was "*absolutely no way*" to show that those injuries must have occurred before, as opposed to after, death and that consequently there was no way that it could be proved, in pathological terms, that those injuries "*must relate to the cause of death*".

26. On 6 January 1998, following the written opinion of counsel, Mr J.A.Price QC, who concluded that there was no realistic prospect of conviction on the evidence then available, proceedings against the appellant were discontinued.

27. Nearly six years later, in late 2003**,** fresh counsel, Mr Alistair Webster QC, reconsidered the matter and advised that there was now sufficient evidence to prosecute - based upon new material, namely:

    (1) Evidence of the appellant's confessions, whilst on remand in August / September 1997, to two fellow prisoners - Michael Wainwright ("MW") and Glen Banks ("GB"). GB had shared a cell with the appellant on "F" Wing, and MW claimed to have spoken with the appellant in the exercise yard.

    (2) Evidence from a "knot expert", Mr Lucas, to the effect that, via comparison with the ropes found at the appellant's address in August 1997, there was "extremely strong

support" for the proposition that the appellant had tied the knots in the ropes around CP's body.

28. The appellant was re-arrested on 13 January 2004. On that occasion a wooden axe, variously referred to as being a climbing-axe or an ice-axe, was seized from his address in Barrow. To avoid confusion, we shall refer to it hereafter as "the wooden ice-axe".

29. The trial started in late November 2004 and (as indicated above) concluded on 28 January 2005. Mr Webster appeared on behalf of the prosecution, and Mr Andrew Edis QC (as he then was) appeared on behalf of the defence.

30. We have seen and considered transcripts from the trial of:

    (1) The judge's summing-up – which includes a summary of the closing speeches on both sides (around 170pp).
    (2) The expert geological evidence of Dr Pirrie & Professor Pye (around 140pp) – relating to the significance of the rock said to have been found by PC Brookes on 30 September 1997.
    (3) The evidence of MW concerning the appellant's alleged confession to him (50pp)

31. These documents were appended to the CCRC's Reference, as were Mr Webster's Opening (15pp) and Closing (42pp) notes prepared for trial, and the CPS notes of Dr Tapp's evidence (6pp). We were told that a transcript of the appellant's evidence is no longer available.

32. In the very broadest outline, the prosecution case (based in part on the alleged confessions to MW and GB, but principally on a mass of circumstantial evidence) was that the appellant had murdered CP, had bound and wrapped her body and had thereafter used his local knowledge, boat and boating skills to deposit her in Coniston Water.

33. The defence case was that the appellant, who was a man of exemplary good character, had not murdered (or ever been violent towards) CP. On Saturday 17 July 1976 he and their three children had gone to Blackpool for the day. CP was due to accompany them but did not do so because she was unwell. When he had returned home, CP was not there. There was no sign of forced entry or disturbance but her wedding and engagement rings, which she always wore, were on the bedside table. He believed that she had left him again. He had never had any dealings with MW, who was lying. GB's evidence was obviously untruthful and unreliable. The evidence overall asserted to be consistent with another, including possibly John Rapson (the murderer of CP's sister), having killed CP, and did not prove that the appellant had killed her. The police were criticised for losing their file from the 1976 missing person investigation, including the appellant's statement given at the time to DI Williams.

34. Alternative scenarios were also proposed. In particular, firstly that CP may have left 'Bluestones' on the Saturday morning with a man seen by a neighbour on the driveway in a VW Beetle car, supported by the evidence of an acquaintance of CP's, Dorothy Baines, who claimed to have seen her at Charnock Richard Services on the M6, some 80 miles south of Leece, at about 6pm on either Friday 16 July 1976 or the following day. Secondly, that John Rapson (the murderer of CP's sister), who at that time was being allowed out

from prison each weekend, might have gone to Leece to look for his daughter Vanessa, and might have come across and killed CP on the Saturday.

The prosecution evidence

35. The prosecution called, amongst others:

(1) Numerous witnesses, including CP's former lover David Brearley, her brother and sister-in-law, her niece (who spoke of the chest freezer in the garage at 'Bluestones'), friends, colleagues, and neighbours as to the history of the relationship between CP and the appellant, CP's state of mind in July 1976, last sightings of CP, the lack of any sighting of her after 16/17 July 1976, and what had happened, or had not happened, after her disappearance.
(2) Two witnesses (Mr & Mrs Young) as to having seen, towards the end of July 1976, a substantial package being deposited into Coniston Water by a man in a small white boat.
(3) Witnesses as to the appellant being a sailor and having a small white boat.
(4) Witnesses as to the appellant reporting CP missing on 4 September 1976, and the subsequent missing person investigation.
(5) Witnesses as to the finding of CP's body in 1997, the further searches of the lake, and what had been found.
(6) Witnesses as to the arrest, interview and charge of the appellant in 1997.
(7) MW and GB as to the confessions which each alleged CP had made to him in HMP Preston in 1997.
(8) Witnesses as to the arrest, interview and charge of the appellant in 2004.
(9) Witnesses and Agreed Facts as to the recovery, in 1997 and/or 2004, at 'Bluestones', or 34 Norland Avenue, or from the appellant's then boat, of various items, including:
    (i) Ropes and string with knots in them.
    (ii) The toilet pan for a high cistern lavatory.
    (iii) A well-used Stanley claw hammer made between 1974 and 1981.
    (iv) The wooden ice axe.
(10) Various expert witnesses, including:
    (i) Dr Tapp as to pathological issues.
    (ii) Dr Roger Ide (rather than Mr Lucas) as to the knots used to bind CP's body, and a comparison between them and the knots in the rope. and string recovered from the appellant's addresses and boat.
    (iii) Dr Pirrie as to geology in relation to the rock said to have been recovered on 30 September 1997 and a comparison between it and rocks recovered from a wall at 'Bluestones'.
    (iv) Mr Rydeard as to a comparison between the Stanley claw hammer and hammer marks found on the flattened piping used to weigh down the body.
(11) All three of his children (who were by then in their thirties):
    (i) Vanessa could not recall 17 July 1976 and the only trip to Blackpool that she could recall was by coach. She thought that all CP's clothes had remained at 'Bluestones', but could not be certain about every item. She said that the appellant was strict, albeit loving, and had done a pretty good job as a lone parent. However, on occasions he had lined all three children up and hit them

with a stick or cane until one of them confessed to having done the wrong that the appellant was concerned about.

(2) Jeremy said that he did remember 17 July 1976. He said that he had gone to his parents' bedroom and had tried to persuade CP to come to Blackpool, and that she had said that she did not want to go, and had been looking down and pensive. When it was pointed out to him in questioning by prosecution counsel that he had made no mention of that in his police witness statement, he said that he had been under pressure when he had made the statement and that his memory had improved since. [There was also evidence that, after making the missing person report, the appellant had told PC Lawson (who had come to speak with the children) that they had not seen their mother on 17 July 1976, and that he had told them that she was asleep in bed and that they should not disturb her] Jeremy said that his father had been indulgent to him and his sisters, not really strict.

(3) Rachael had no recollection of 17 July 1976, but also spoke well of the appellant, saying that she was sure that he had not used any implement to punish her with. When that was contrasted with the content of her police witness statement (in which she had spoken of an occasion when the appellant had lined up all three children and struck them with a belt about six times) she said that the police had put words into her mouth.

36. Various other matters were also dealt with in Agreed Facts, including the agreed continuity of all the exhibits (apart from the rock said to have been found by PC Brookes in Coniston Water on 30 September 1997); the fact that (in 1997) the appellant had been on remand at HMP Preston for approximately 14 days – during which time he had spent several days on "F" Wing and had shared a cell with GB; John Rapson's history since murdering CP's sister in 1969 – including his denials, in a witness statement and in interview, of any involvement in CP's murder; and that, in media and television reports following the finding of CP's body, and in the Channel 4 TV broadcast "Ladies of the Lakes" (which was seen by MW before he went to the police and alleged that the appellant had confessed to him) it was reported / stated that CP had severe facial injuries / injuries which were probably caused by an axe.

37. The prosecution also called some witnesses who were relied on by the defence (e.g. Mr Paul Shaw who came forward to give good character evidence after seeing a report of MW's evidence), and read the statements of others (e.g. Dorothy Baines who had cognitive issues and was unwell).

38. In what follows, we deal in more detail with those parts of the evidence to which the submissions of Mr Henry Blaxland QC, on behalf of the appellant, have been particularly directed in this appeal.

(1) "Confession" evidence

39. MW and GB had been in HMP Preston whilst the appellant was remanded there, after his first arrest, from 26 August 1997 to 9 September 1997. As indicated above, GB had shared a cell with the appellant on "F" Wing, and MW claimed to have spoken with the appellant in the exercise yard. MW was in custody consequent on assaulting his young stepson.

40. On 9 October 2000, MW went to the police after seeing the Channel 4 television documentary "Ladies of the Lakes" – in the course of which Dr Tapp had described the weapon used to murder CP as "*some sort of axe*", and at the end of which CP's family had appealed for help. MW made a witness statement that same day, in which he recounted he had been on "F" Wing, where GB had confided in him that the appellant had been talking about the murder in his sleep and was obviously very disturbed about it. After that he had encountered the appellant in the exercise yard, when he had heard the appellant mumbling "*she deserved it*". Subsequently, he said, the appellant had approached him in the exercise yard and had confided in him that he had killed his wife with an axe which had a black handle and a metal shaft with a pick on one side and an axe on the other – which he, MW, had recognised from the description as one used for rock climbing. MW made a further statement on 16th July 2004 in which he said that he had remembered that the appellant had also said that he had buried the axe on the shore of Coniston Water between the boathouse and the water. In his final statement on 30th November 2004 (made just before he gave his testimony at trial) he said that he had recently further remembered that the appellant had told him that he had come home unexpectedly and had found his wife in bed with another man, that he had tried to hit the man who had run off out of the house, that he had then gone back and hit his wife with an axe used for mountain climbing, and that at the time that he had attacked his wife he had gone up some stairs. A copy of each of these statements accompanied the CCRC Reference.

41. In his evidence at trial MW said that he saw the appellant in the exercise yard where other inmates were calling him names, including "*bin bags*", which appeared to upset him. The appellant was mumbling, and MW heard him say "*She deserved it*", but the appellant did not explain what he meant. MW said that, on a later occasion, MW had approached him and asked if he could confide in him because he needed to get something off his chest. He said he had killed his wife "*because she should have been reliable to him and not to others*" and that she deserved it. MW said that the appellant had told him that he had put his hands around her neck until she passed out and had then used a weapon (MW had understood him to refer to an ice axe with a black handle and a metal shaft) in order to start to dismember the body, but had stopped and had then wrapped her up. The appellant had said that he put her body in his car and had taken it to Lake Coniston where he had gone out on his boat. He had later buried the ice axe. MW added that the appellant had also said he had come home and found his wife in bed with another man who had run out of the house. MW said that he had also had a conversation with the appellant about the appellant helping him with a politics course.

42. MW was cross examined at length, and to considerable effect, about a number of matters, including:
    (i) The limited extent of his opportunity to have had any contact with the appellant in HMP Preston.
    (ii) Details that he had not mentioned in his initial statement (for example the burial of the axe and finding CP with another man).
    (iii) Details given in evidence which he had not mentioned in any of his witness statements (for example, his assertion the appellant had said that he had attempted to dismember CP's body).
    (iv) Inconsistencies between his account and the known facts (e.g. in his third witness statement he had referred to the appellant mentioning that he had gone

up some stairs at the time he had attacked his wife – whereas 'Bluestones' was a bungalow and did not have stairs).

(v) His long-term use of drugs and their effects on his memory.

(vi) His long medical history including four admissions to hospital for psychiatric treatment, and the fact that he was hearing voices telling him to hurt and kill people prior to his first approach to the police.

It was put to him that he was an attention seeker and that giving this false evidence was a chance for fame. MW admitted having used amphetamine, cocaine, LSD, whizz and trips in 1997, but asserted that he had not used them since then – rather only cannabis, latterly at the rate of around 15 joints a day.

43. MW had given police the name of GB, who was located in June 2001 living in a hostel. GB was found to have learning difficulties and was initially asked only if he recalled being in prison with the appellant, to which he responded, "*He put her down with bricks and a pipe*". Thereafter, GB was formally interviewed in the presence of an appropriate adult. The interview was video recorded. During its course GB said, amongst other things, that the appellant had told him that he had put some white powder into CP's drink, and that the appellant and CP had been going to Blackpool by boat to celebrate their fiftieth wedding anniversary, and that they had argued on the boat about leaving the children with babysitters.

44. In evidence GB who, because of his vulnerability, gave evidence over a video link, said that he shared a prison cell with the appellant, who had told him he "*should not have done it*" and that he had "*killed his Mrs*". He said that the appellant had told him that he had taken his wife to Blackpool in a boat, had killed her on the boat, and had dumped her body, using black bags and weights or bricks. GB's evidence was that the appellant kept saying he should not have done it, that it was doing his head in and that he had to tell somebody about it.

45. GB was cross examined on a number of discrepancies in his evidence, including that in his interview he had said that he had shared a cell with the appellant for some months. It was suggested to him that someone had put these things into his mind. However, he denied that he would ever "*fit somebody up*" for murder. He said that he had no recollection of the appellant having talked in his sleep.

46. In his closing speech Mr Webster made clear that if MW's had been the only evidence against the appellant, he would not have invited a conviction on it. Mr Webster acknowledged that some aspects of MW's evidence were inconsistent with other evidence and that there was no doubt that MW had some bizarre beliefs and that he was a man with previous convictions – which were all powerful reasons to treat his evidence with real and extreme caution. There were, however, some elements of MW's evidence that were supported by common sense and the evidence – the fact that other inmates would have got at the appellant; the fact that the appellant was a primary school teacher; that it was not suggested that an ice-axe had been mentioned in the media or the television documentary. We deal in para 52 below with what Mr Webster said about the wooden ice-axe.

47. As to GB, Mr Webster reminded the jury that the appellant's case was that he had not said a single word to GB about the case, and that the police must have fed information to him. Mr Webster conceded that much of what GB had said in evidence was unrealistic,

that parts of his account were confused; and that some details were clearly wrong. However, Mr Webster submitted, GB had no motive to lie, was trying his best to tell the truth, aspects of what he had said did chime with the evidence, and that the issue had to be addressed as to where he had got those aspects from, if not the appellant.

48. In his closing speech, Mr Edis asserted that MW was a self-confessed attention seeking liar, who had effectively been dumped by the prosecution in their closing speech, and that GB was a suggestible man with severe learning difficulties who had got silly ideas into his head from somewhere.

49. In summing up, McCombe J directed the jury that they needed to exercise extreme caution before acting on the evidence of MW and GB, and that in GB's case there was expert evidence (from a Dr Withers) that GB was prone to suggestibility by questioners and was also prone to acquiesce. The judge continued that in GB's case there were also areas in which his evidence obviously could not be true and which were obviously unsound – namely, his initial suggestion that he had shared a cell with the appellant for some months; his evidence that CP had fallen overboard from a boat; the alleged trip across the water to Blackpool; and the alleged wedding anniversary celebration.

(2) The wooden ice-axe

50. It was an agreed fact, as touched on above, that the wooden ice-axe had been found at the appellant's home in January 2004. It is referred to in the typed copy of Mr Webster's opening note for trial as follows:

"*In January 2004 when his house was searched, he still had a climbing axe (the significance of which will become apparent later)…*

[the appellant] *opened up to* [MW] *and told him that he had killed his wife. He had strangled her until she had passed out. He had then hit her with various objects, one of which* [MW] *recognised, by its description, as a climber's ice axe…*
Any alleged confession to a fellow inmate needs to be treated with caution…[MW] *however, had left prison in November 1997 and had not been back since. He had had no further dealings with* [the appellant] *and had no motive to lie to implicate him. Further, you will remember that a climber's axe was recovered from* [the appellant's] *home, when it was searched in 2004 following his final arrest*".

51. The wooden ice-axe was part of the unused material and was introduced into the evidence at trial by the defence during cross-examination of a prosecution witness, Mr Paul Shaw, a long-standing friend of the appellant. Mr Shaw's evidence, as summarised by the judge, was that "*he could not countenance the idea that the appellant had used that ice axe in the dreadful manner that might be being suggested in this case*". Mr Shaw had borrowed the axe some years previously and, as indicated above, had come forward (after reports in the media of MW's evidence) to support his friend by telling the police that he could not imagine the appellant having used it to kill his wife. It was after his evidence that the wooden ice-axe was made Exhibit 1. However, neither side asked Dr Tapp about it.

52. According to Mr Webster's note, and against the background that it was the appellant's case that he had never seen, let alone spoken with, MW at HMP Preston, he relied on the axe in this way in closing:

"*…there were elements of* [MW's] *evidence which you may have thought to be supported by common sense and the evidence…There is no suggestion that the use of an ice axe was mentioned on any TV programme. If this was an invention on* [MW's] *part, it was an extraordinary coincidence (one of many which the defence will have to rely upon) that it just happens that* [the appellant] *was a climber and had, to our certain knowledge, a climbing-axe. Bear in mind, of course, that he described a black axe, whereas the one recovered from* [the appellant] *was wooden. An ice-axe nevertheless*."

(3) Evidence of a VW Beetle and a sighting of CP

53. A neighbour, Sabine Dixon, who had not made a statement until 1997, gave evidence that in the morning or at lunchtime on the day that CP had disappeared she had seen a pale blue or grey blue Volkswagen Beetle drive up to 'Bluestones' and stay for about 15 minutes. It was driven by a man who was not the appellant. Her evidence was that she believed that she may have seen the car on a previous occasion or occasions when the appellant and CP were both at home. She could not be sure about the date, but said that something had made her think that it was the day that the family had gone to Blackpool – though she could not recall how she knew that that was on 17 July 1976.

54. As indicated above, there was also evidence from CP's acquaintance, Dorothy Baines, that she had seen CP at the Charnock Richard Service Station, some 80 miles south of Leece, in the evening of either Friday 16 July 1976 or Saturday 17 July 1976. The prosecution case in relation to her was that she did not go to the police until over a year after CP had disappeared; that her account was confused and plainly wrong; and that CP heading south was inconsistent with her ending up in the lake nearest to Leece.

(4) Man seen depositing a large package from a white boat on Coniston Water

55. Mr and Mrs Young were on holiday by Coniston Water in late July 1976 when, parked on the eastern side, they saw a man in a small boat dumping a large package into the water. Mrs Young joked that perhaps the man was getting rid of his wife. However, in the absence, at that time, of any publicity about a missing person, they did not report what had happened.

56. The Youngs did not see the television documentary in 2000 but, as a result of the publicity when the appellant was re-arrested in January 2004, Mrs Young contacted the police. In her initial contact with the police, by telephone, she said that the boat was a "*white, small cabin cruiser type"* and that the man was wearing a black wet suit and was slim with glasses.

57. In her first witness statement, made on 13 February 2004, Mrs Young described a "*small yacht… white in colour*" with a mast but no sails up, with one male on board. She said that he was of slim build, was standing up, and was wearing a black wetsuit and spectacles, and had brown or auburn hair that was either wavy or curly. In his first statement, made on the same date, Mr Young said that he had seen a man who was standing up in a boat like a yacht that did not have its sail up, push a package into the water. He could not describe the man.

58. In June 2004, the Youngs were taken back by the police to the eastern shore of Coniston Water. They each separately tried to identify the location from which they had observed

the man in the boat. Mrs Young said that she was 80% sure that it was at Machell Coppice. Mr Young said that he could only say that the location was south of Machell Coppice but not as far down as Dodgson Wood (which was adjacent to Bailiff Wood – near to which CP's body was found). It was common ground at the trial that Machell Coppice was over a mile north of where CP's body was found, and that if Mr & Mrs Young had been there what they had seen could not have been CP's body being put into the water. The prosecution case was that given the passage of 28 years and changes to the shoreline, and unsurprisingly, the Youngs were mistaken as to the location and must have been at Bailiff Wood (which, the CCRC points out, had the only beach on the eastern shore from which the deposition of CP's body could have been seen).

59. Mrs Young's evidence at trial was that they had been parked on a beach at the side of the lake; and that straight in front of them on the lake she had seen a man standing in a small white boat. He was wearing a black or very dark wetsuit, was thin and very thin faced, and had brown / auburn hair, and possibly a moustache. Mrs Young said that she was "*probably over 50% sure*" that he was wearing glasses. She added that she was pretty sure that she had identified the correct location to the police. Asked about the description of the boat that she had given when reporting the incident, she said that she knew nothing about boats, and that it had been a small boat with, she supposed, a small motor on it. Asked if she had meant a boat with a cabin, she answered "*A little bit, yes, ah ha*". She said that she was not sure if the boat had sails. It possibly had a mast, but did not have sails up. Mr Young said that he was "*confident-ish*" that the location was at Machell Coppice.

60. The appellant accepted in evidence that he had owned a white "*505 fast sailing dinghy*" which he had sailed extensively on Coniston Water. He asserted that he had sold the boat in June 1976, but his sailing log suggested that it was actually sold in July 1976. He agreed he had auburn hair at that time but asserted that he only wore reading glasses indoors. In cross-examination he was shown a photograph of himself dated 25 August 1973 in which he was, he said, surprised to see himself wearing glasses outside.

61. We deal below with the prosecution's reliance on the evidence of Mr & Mrs Young as part of its circumstantial case. The defence asserted that, given that each of them had identified the area of Machell Coppice as their location at the time of their sighting, whatever they had seen could not have been the deposition of CP's body.

(5) Pathological evidence

62. Dr Tapp gave evidence that he had examined the body, which was bound in the foetal position. He described the wrappings (above), the rope that had been used to tie her and the lead weight.

63. He described how nearly all of the soft tissue had disappeared from the scalp and face. On the right side of the inner skull there was a prominent area of brown discoloration, suggesting the possibility of bleeding having occurred in that area during life. There was no similar discolouration on the left side. The facial bones were fractured and some of the fragments contained one or more teeth. The two largest fragments from the facial bones were part of the zygomatic (cheek) bone from each side of the face. There was extensive shattering of the upper jaw. It appeared that the anterior border of the fragment of zygoma from the left side of the face had a sharp edge, suggesting that it had been cut

rather than fractured. The remainder of the body was largely in a state of adipocere (i.e. had a white soapy appearance via the breakdown of neutral fats in the body).

64. Dr Tapp gave his conclusions, which included the following:

(1) The condition of the remains was consistent with CP having died shortly after her disappearance in July 1976 – but with a margin of some months.
(2) There was no sign of any attempt to dismember the body.
(3) The position in which the body had been tied up would have necessitated it being very flexible; this would have needed to be done very soon after death, within 2-4 hours before rigor mortis set in.
(4) The facial injuries were the result of several deliberate impacts on the central part of the face. These could have been in the form of blows with a heavy blunt object or by kicks, but the appearance of the teeth and the anterior border of the zygoma suggested strongly that the implement had a sharp edge to it and that the central part of the face was destroyed by at least two blows in a downward direction.
(5) The facial injuries were caused before, or shortly after, death.
(6) The fractures to the left hand and wrist could not have been caused accidentally and their positions were consistent with them being sustained during a defensive act – but could also have been caused by CP throwing a punch.
(7) Overall, there were at least 4 injuries (2 to the face and 2 to the left hand) which must have involved at least three impacts.
(8) The cause of death was facial injuries and blows with a heavy, sharp object.

(6) The finding of the rock and expert geological evidence

65. As indicated above, the prosecution case was that PC Brookes had found the rock during the recovery of clothing at a depth of around 12 metres and at a point between where CP's body had been found and the shore – albeit that PC Brookes himself was unaware of having done so, and that the rock was the only item that was excluded from the Agreed Fact that the continuity of exhibits was not contested.

66. As also indicated above, expert evidence concerning the rock was given at trial by two geologists: Dr Pirrie (for the Crown) and Professor Pye (for the defence). Both had examined the rock and compared it with sample rocks gathered from the nearby shores of Coniston Water and from a wall at 'Bluestones'. Dr. Pirrie concluded that the rock and four of the samples recovered from 'Bluestones' contained certain recognisable similar characteristics (a calcium bearing rare earth element mineral). In contrast the samples recovered from the shores of Coniston were of a different composition.

67. Professor Pye was of the view that there was a high degree of similarity between the rock and rocks from 'Bluestones'. However, there was also, he opined, a high degree of similarity between the rock and three samples from the eastern shore of the lake. Both the rock and those from 'Bluestones' came from the same general source, namely the Windermere Supergroup. He believed that not enough research had been done and that rocks with similar mineral constituents could be more common in the Coniston area.

68. In summing up the issue McCombe J reminded the jury that Dr Pirrie had only been a forensic scientist for some 18 months, and that this was the first case in which he had given evidence. He posed the question whether Dr Pirrie's lack of experience meant that

his evidence was perhaps less cogent than that of Professor Pye. It was, the judge explained, for the jury to assess how the expert geological evidence helped them to decide whether, as Mr Webster had put it in closing, it was a strange coincidence that rocks with a calcium bearing rare earth element were found at 'Bluestones', and apparently in the one recovered in the lake, but not in the Coniston samples.

(7) Lies by the appellant

69. In closing, and as part of its circumstantial case, the prosecution relied on five alleged lies told by the appellant, as follows:

(1) The appellant admitted that in the custody proceedings before Magistrates in 1975 he had falsely denied having committed adultery with Mrs. Walmsley because he did not want to prejudice his custody case.

(2) The appellant initially told police that he did not know that CP went to live at a local guest house when she had left previously in September 1974. It was suggested that he had said that to persuade the police that she had previously disappeared without trace prior to 1976. The appellant agreed in cross-examination that he had known where she had gone in 1974, as he had taken her to the guest house himself.

(3) As to the date he had sold his dinghy, saying he had sold it in June 1976; however, the entry in his sailing log, made by him, gave the date as July 1976. In evidence the appellant said that he had noted the date wrongly in the log.

(4) Regarding an incident in 1975 when CP had become hysterical at 'Bluestones'. The appellant initially told police that CP had already "*gone berserk*" at the time of Mrs. Walmsley's arrival, however Mrs. Walmsley's evidence was that CP had only become upset when Mrs Walmsley had absented herself for a few minutes to go to the lavatory.

(5) As to whether he wore glasses when outside in 1976. In evidence he had asserted that he did not, until shown a photograph in cross-examination which showed him outside in glasses in 1973.

The defence evidence

70. The principal defence evidence at trial was that of the appellant. As we have already indicated, there is no transcript of it. What follows is taken from the judge's summing up.

71. The appellant (by then aged 60) denied that he had killed his wife. He gave evidence of his good character, together with his positive qualities as a single parent and a school teacher. He described his early relationship with CP and their matrimonial difficulties. He spoke about the 11-month period before her disappearance, when she had returned to the matrimonial home and had seemed to be happy. They were re-building their relationship and he trusted her completely.

72. He gave his account of the planned trip to Blackpool with the children. He said that, on the morning of the trip, his wife had told them she felt unwell and had remained at home. When he returned, his wife was gone. There was no sign of any disturbance at the address, but her wedding and engagement rings (which she always wore) were on the dressing table, which concerned him because she never took them off. He continued looking after the children and waited to hear from her. He did not inquire of the neighbours or of family members because they were not in the habit of keeping others informed about their difficulties. He simply assumed that she had left him again, for another man.

73. The appellant spoke about his keen interest in sailing and the various boats he had owned. He denied being the man seen by Mr and Mrs Young on Coniston Water. His "*505*" sailing dinghy did not fit their description of a "motor boat with a cabin", and, it was suggested, they would not have been able to see the location where the body was deposited/recovered. Although he had sailed on Coniston Water over the years, he denied having previously visited the site where Carol's body was found although he agreed that it was almost opposite the location of where his family had a caravan in his childhood.

74. The appellant denied that he had tied the knots around CP's body but accepted that as a former scout, a climber and a sailor, he was familiar with knots. (The prosecution conceded that this level of knot expertise was common in the Lake District). Although he accepted lying to the Court about his own infidelity during his custody proceedings, he had not lied about other matters, including about the date he sold his "*505*" sailing boat, and regarding the incident where Carol had gone "*berserk*" in the presence of Mrs Walmsley. He was critical of the police for losing the original 1976 missing persons file, including the detailed statement he had given about his wife's disappearance when matters were most fresh in his mind.

75. The appellant said that MW and GB had both fabricated the alleged prison confessions; he had never had any dealings with MW and had not spoken with GB about his case. He said that he had followed his solicitor's advice at the time, not to speak to other prisoners about his case – though he may have spoken about being a climber (which MW may have heard about and used in fabricating his account). The appellant's solicitor was called and confirmed having given the appellant that advice at the time.

76. Amongst the other witnesses called by the defence were:

    (1) A number of character witnesses – including the Rector of the appellant's local church.
    (2) Jennifer Park and both her children.
    (3) Experts, including Professor Pye (in relation to the rock) and Mr Baxter (in relation to whether the appellant's Stanley claw hammer could have been used to flatten the lead piping used to weigh CP's body down).

The closing speeches

(1) Prosecution

77. From the combination of Mr Webster's closing note, and the judge's summary of his speech, it is clear that Mr Webster re-iterated that there were two aspects to the prosecution case - the direct evidence of MW and GB as to what the appellant had said to them, and a mass of circumstantial evidence which both excluded all others and proved the guilt of the appellant. Mr Webster made clear that the circumstantial evidence was the principal basis upon which the prosecution case was advanced.

78. We have already dealt with Mr Webster's warning to the jury as to the need for extreme caution when considering the evidence of MW and GB, and of his other remarks in closing in relation to them (including whether it was a coincidence that the appellant was a climber and owned a wooden ice-axe) at paras 46, 47 & 52 above.

79. Mr Webster submitted that there were only three possibilities in relation to the murder of CP, namely that:

(1) She had been murdered by the appellant, who had thereafter disposed of her body.
(2) She had been murdered by an intruder, who had thereafter disposed of her body.
(3) She had run off with another and either that person, or thereafter someone else, had murdered her and disposed of her body.

80. As to an intruder (including John Rapson) being responsible, Mr Webster pointed out that:

(1) The appellant had conceded in evidence that it was unlikely that the murder was carried out by an intruder.
(2) There was no sign of any break in or disturbance at 'Bluestones' and CP had disappeared.
(3) CP was wearing her nightie when she was killed.
(4) Dr Tapp's uncontradicted evidence was that CP had suffered at least two blows to the face with significant tissue loss.
(5) There would therefore have been significant amounts of blood and bone in the house.
(6) There would have been no reason for the intruder to have cleaned up.
(7) It was inconceivable that the intruder would also have tied and wrapped the body, and that he would have had a green canvas type bag (Exhibit 29) of the same type as the appellant used to own.
(8) The intruder would need to have been familiar with knots used by both sailors and climbers.
(9) There was no reason for an intruder to have put tapes over CP's eyes.
(10) There was no reason for an intruder to have taken CP's wedding and engagement rings off and then left them.
(11) An intruder would readily have been able to take CP's handbag, purse and any other valuables, but none were taken.
(12) An intruder would have had no reason to try to hide CP's identity or to remove her body and deposit it in Coniston Water.

(13) Rather, an intruder would just have wanted to get away – quickly, quietly and unnoticed.

81. As to John Rapson, Mr Webster added that:

(1) There was no way that CP would have gone off with her sister's murderer at all, and especially whilst wearing a short nightie.
(2) Against the background that it had been suggested that Rapson had an interest in bondage, there was no question of CP having been tied up for sexual gratification, the purpose had been to make her body as small as possible.
(3) There was no evidence that Rapson had the necessary expertise in tying knots.
(4) Rapson, who had denied any involvement, would have had no purpose in seeking to remove the body, taking off CP's rings etc.

82. Mr Webster further submitted that running off with another and being murdered by that person, or thereafter by someone else, could be surely discounted given that:

(1) The jury could readily exclude CP's last lover, David Brearley, who had given evidence.
(2) CP had never mentioned any new lover to anyone (or been seen with anyone).
(3) Any new lover would have had to keep CP a secret, so that she was not missed by those who knew him.
(4) In the run up to Saturday 17 July 1976 she had been telling others that she was looking forward to going to Blackpool.
(4) There was strong evidence that she was devoted to her children.
(6) It was highly unlikely that, on the day of their treat, she would have upped sticks and run off with a new lover.
(7) Or that she would have run off without even leaving them a note.
(8) There was a significant body of evidence that CP was looking forward to the holidays, to her niece's birthday on Sunday 18 July 1976, to the next term at her school, and to the product of the Christmas Club.
(9) On each of the five occasions when she had left (in September 1969, March 1974, April 1974, September 1974, and April 1975) the appellant had known where she was.
(10) When she had left previously, she had kept in touch with her own family and had actively sought to gain custody of the children.
(11) The incident involving Mrs Walmsley in 1975 was in circumstances where CP was trying to make sure that there were proper care arrangements for her children.
(12) She had found separation from her children to be torture, which had led to the end of her relationship with David Brearley.
(13) There was also clear evidence that CP took her teaching responsibilities seriously.
(14) If she had gone off voluntarily, she would surely have taken her handbag, purse etc, not leave them behind.
(15) Without them she had no means but had not withdrawn any money from her bank accounts – whether joint or sole.
(16) She had made no contact at all with her family

83. Detailing the circumstantial case against the appellant necessarily involved the repetition of a number of those points. In the combination of the prosecution evidence and Mr Webster's speech, the circumstantial case included the following:

(1) The events after the murder of CP were clearly calculated, as demonstrated by the apparent attempt to disguise her identity, the taping of her eyes, the sewing up of her pinafore dress, and the time and care taken in relation to the disposal of her body.
(2) It could thus be inferred that it was no coincidence that CP had disappeared on the first day of the school summer holidays, thereby giving the maximum amount of time before she was missed at work.
(3) The killer knew CP well enough to have come across her in her nightdress.
(4) The appellant's account was that he had last seen her in her nightdress on the morning of Saturday 17 July 1976, and he had told the police in 1976 that the children had not seen her that morning.
(5) The appellant had a potential motive (marital difficulties and past infidelity).
(6) In the run up to Saturday 17 July 1976 CP had been telling others that she was looking forward to going to Blackpool.
(7) There was strong evidence that she was devoted to her children.
(8) The incident involving Mrs Walmsley in 1975 was in circumstances where CP was trying to make sure that there were proper care arrangements for her children.
(9) She had found separation from her children to be torture, which had led to the end of her relationship with David Brearley.
(10) It was highly unlikely that, on the day of their treat, she would have upped sticks and run off.
(11) Or that she would have run off without even leaving the children a note.
(12) Rather, there was a significant body of evidence that CP was looking forward to the holidays with the children, to her niece's birthday on Sunday 18 July 1976, to the next term at her school, and to the product of the Christmas Club.
(13) There was also clear evidence that CP took her teaching responsibilities seriously.
(14) On each of the five occasions when she had left (in September 1969, March 1974, April 1974, September 1974, and April 1975) the appellant had known where she was.
(15) When she had left previously, she had kept in touch with her own family and had actively sought to gain custody of the children, but there was no contact after 16 July 1976.
(16) CP's handbag, purse, rings and clothing (or most of her clothing) remained at 'Bluestones', and no money was withdrawn from any of her accounts, whether joint or sole, thereafter.
(17) There was therefore a strong inference that she had been killed at ''Bluestones'' on 16 or 17 July 1976 - though not necessarily in the marital bedroom.
(18) There was also a strong inference that the murder had not been carried out by Rapson, by any intruder, or by any new lover and therefore it must have been carried out by the appellant.
(19) On the appellant's account, despite being told by CP in the morning of Saturday 17 July 1976 that she was unwell, on his return he made no inquiries of anyone, including any doctor or hospital, as to where she was.
(20) Nor had he taken any steps thereafter to find out where and/or how she was – whether by enquiries of her family, hospitals, her doctor, friends or otherwise.
(21) Nor had he taken any step either to check their joint bank account or to put a stop on her use of it.
(22) Dr Tapp's evidence was that CP's body must have been bound into the foetal position (for ease of concealment and transport) within 2-4 hours of death.
(23) A bandage had been put over her eyes.

(24) Dr Ide's evidence was that 12 different types of knots had been used, each appropriately to secure CP's body in the foetal position. Nearly every type of knot was mirrored in ropes and string recovered from 'Bluestones', Norland Avenue and the appellant's then boat in the period from 1997 – 2004. They included, in particular, stopper knots (used by climbers to prevent slippage) and looper knots (which also prevented slippage). Thus, the appellant had the expertise to tie CP's body in the way that it was tied – albeit that so would other climbers and sailors, of which there were numbers in the Lake District.

(25) The appellant had used to own a green canvas bag like Exhibit 29 (which was one of the bags used to encase the lower half of CP's body).

(26) One of CP's dresses had been used as the outer bag for her body and had been sewn up with her body inside it.

(27) The lead used to weigh down CP's body had originally been the pipe for a high cistern lavatory, which had been hammered flat.

(28) A toilet pan for a high cistern lavatory had been left in the garage at 'Bluestones' when the appellant had sold the house in the early 1990s (albeit that, when recovered years later, it had paint splashes on it and the flattened piping did not).

(29) Mr Ridyeard's opinion was that the appellant's Stanley claw hammer, which was manufactured between 1974 and 1981 (and was seized by the police in both 1997 and 2004) could, when much newer, have caused the hammering marks found on the flattened pipe – albeit that the defence expert, Mr Baxter, disagreed.

(30) There was a lockable chest freezer in the garage at 'Bluestones' which could have been used to store the body – which storage would have been consistent with the lack of decomposition of the body before it was deposited in Coniston Water.

(31) The body was deposited in Coniston Water in the area opposite, or almost opposite, where (as a child) the appellant had holidayed in his family's caravan and sailed.

(32) It was not necessary to sail out into the middle of Coniston Water to reach deep water, and the body was found next to a drop into deep water.

(33) If the jury were sure that Mr & Mrs Young were at Bailiff Wood towards the end of July 1976 (rather than at Machell Coppice) and that what they had seen was the deposition of CP's body from a small white boat, then:

  (i) The appellant was a sailor, and was thoroughly familiar with Coniston Water.

  (ii) In July 1976 he owned a small white boat (and a trailer, and had previously sailed the boat on Coniston Water).

  (iii) He had a wetsuit.

  (iv) He also broadly matched the aspects of the man's description that Mrs Young had recalled.

(34) The evidence of Dr Pirrie (albeit contested by Professor Pye) as to the rock said to have been found with clothing in Coniston Water on 30 September 2019.

(35) The fact that the appellant did not make the usual child care arrangements with the Prices at the start of the Autumn term on 2 September 1976, and made no check with CP's school to see if she had attended or otherwise been in touch (which he had claimed in evidence was simply the result of neglect by him).

(36) The fact that when, on 4 September 1976, he informed CP's brother, Ivor Price, that he had had no contact with CP for 6 weeks, he did not ask Ivor Price if he had seen or heard from her.

(37) The fact that he made the missing person report to the police (on 4 September 1976) via a solicitor.

(38) The lies that the appellant was alleged to have told (see para 69 above).

(2) Defence

84. As summed up to the jury by McCombe J, the principal points made in closing by Mr Edis were that:

(1) There was very little evidence as to how CP's death had occurred – only that there had been inhalation of blood via blows from, perhaps, a heavy sharp instrument.
(2) The appellant had given essentially the same account throughout his interviews and, to the extent that it had varied in some details from what he had said in evidence, those variations were the developing of memory rather than any conscious attempt to lie.
(3) All of his children had spoken of him as being a loving parent and of a non-violent disposition.
(4) A considerable amount of evidence had been given as to the appellant's positive good character.
(5) Apart from the alleged prison confessions, all the evidence was circumstantial and thin.
(6) There was nothing like blood, or a clothes specimen, or a hair specimen to tie him into the fatal events.
(7) None of the rope used to tie CP's body could be linked with any of the ropes recovered from the appellant's houses and boat – including the ones that had survived from 'Bluestones'.
(8) If there was a mystery lover on the scene that would open up all sorts of possibilities – because anything could have happened to CP, whether by being taken away by a mystery man or at the hands of someone else after that.
(9) The problem for the defence was that she had not been seen after 17 July 1976, but that might have been because, after all the time that had passed, people had forgotten seeing her, or they had since died – thus prejudice to the defence from the passage of time had to be borne in mind.
(10) In contrast to all the evidence about CP being in a good frame of mind before she had disappeared, the jury should bear in mind the following strands of evidence that the prosecution had ignored:
    (i) Sabine Dixon saying that, earlier in 1976, CP was low in mood.
    (ii) The Prices thought that, at an event at Barrow civic hall about a week before CP disappeared, she was depressed or low.
    (iii) Mrs Robinson, the neighbour, saying that she had probably seen CP on the Saturday morning.
    (iv) Sabine Dixon's sighting of the VW and her thinking that it was on the Saturday morning.
    (v) Dorothy Baines' account that she had seen CP at Charnock Richard services at or about that weekend – she thought on the Saturday.
(11) Albeit that Rapson had no reason to dump CP's clothes, and had no connection with Coniston, the prosecution had failed to exclude the possibility that he was the killer, and that it would be an extraordinary event if both sisters had been killed by different men, as opposed to by the same man.
(12) In April 1975 CP had been prepared to leave her children to go back to live with Mr Brearley.
(13) There was a serious question as to whether the rock was really recovered from the lake at all – as opposed to being scooped up at the side of the lake.

(14) In any event, the prosecution had accepted that it could not be proved by science alone that the rock had come from 'Bluestones' and the prosecution's claim of remarkable coincidence had to be seen in that light, which should give rise to substantial doubt in the jury's minds.
(15) The knot tying skills demonstrated by the person who bound CP's body were nothing particularly special.
(16) (As indicated above) MW was a self-confessed attention seeking liar who the prosecution had effectively dumped, and GB was simply a suggestible man with severe learning difficulties who had got a silly idea into his head from somewhere.
(17) The appellant's admitted lie on oath to the Magistrates was in a very different scenario, and should not be got out of proportion.

The renewed application for leave to appeal in 2008

85. Following his conviction, the appellant sought permission to appeal. After refusal by the single judge the application was renewed before the full court (Keene LJ, Beatson & Macduff JJ) on 27 November 2008 – see [2008] EWCA Crim 2963.

86. The appellant relied upon grounds drafted by fresh counsel, Mr Simon Bourne-Arton QC. These included an application to rely upon fresh expert evidence from a further geologist, Dr Andrew Moncrieff, contained in his report dated 17 October 2007.

87. Dr. Moncrieff had examined the various rock exhibits in 2006 (21 months after the appellant's conviction) and had also done field work of his own at Coniston Water. In his opinion the composition of the rock, as well as being similar to samples from 'Bluestones', was also indistinguishable from samples collected from the wider area of Leece and likewise from rocks adjacent to the place where the deceased's body had been brought ashore. In those circumstances, the conclusion that the composition of the rock was sufficiently unusual to allow a link to be inferred to 'Bluestones', was unfounded. Dr Moncrieff concluded that the composition of the rock was, in this regard, meaningless.

88. Mr Bourne-Arton contended that, in the absence of evidence linking the rock to 'Bluestones', the case against the appellant was weak and the conviction was consequently unsafe.

89. The Court refused the renewed application for leave to appeal, concluding that Dr Moncrieff's evidence did not raise a reasonable doubt as to the safety of the conviction and could not, therefore, afford a ground for allowing the appeal. The Court's reasoning was set out by Keene LJ at [23] – [26} of the judgment, as follows:

> "23.…*We bear in mind that this is an application for leave to appeal, not the appeal itself. It is right that the Crown's evidence about the rock was part of the circumstantial evidence against the applicant at trial and indeed that some time was spent on the evidence of the opposing experts. However, we have concluded that it is not realistically arguable that the evidence of Dr Moncrieff raises a reasonable doubt as to the safety of the conviction.*
> *24. We have a number of reasons for arriving at this conclusion. First, the evidence at trial as to how this rock came to be found so as to link it to the body was far from*

clear. No witness could say with any confidence how it came to be found. Secondly, the evidence of the experts at trial must have left doubts as to whether it could not have come from the Coniston area. Dr Pirrie, as we have said, accepted that no studies had been carried out of the incidence of the calcium rare earth element in the Lake District and he agreed that he could not exclude the possibility that "it does occur and may occur in rocks in the Coniston area" because detailed work had not been carried out. Professor Pye's evidence before the jury was that Dr Pirrie had not "demonstrated satisfactorily" that the same association did not occur in rocks around Coniston shore. So the position after those experts had given their evidence was a long way from being clear-cut and the jury may well have found it very difficult to decide what conclusions could be drawn from this geological evidence.

25. Thirdly, this evidence was only one element in a strong circumstantial case against the appellant. We have referred to many of those features already. They include motive arising from the established evidence of past marital disharmony, the applicant's knowledge of knots, his ability as a sailor, and access to a boat (very necessary given the location of the body some distance from the shore), his knowledge of Coniston Water including the part of it directly opposite where the body was found, his lies (some of which were not in dispute), the evidence of a man with some similarities to the applicant seen in a white boat (the same colour as his dingy) pushing a large bundle over the side of the boat in late July 1976 at the eastern side of Coniston, and of considerable significance the clothes found on the body plus the lack of disturbance at home. An intruder was highly unlikely, given the fact that there was said by the applicant to be no blood at the house and no sign of forced entry; that she was wearing a nightie and that her murderer had had access to her pinafore dress that he used to wrap the body. Since she was still in her nightie it was also very unlikely that she had gone off from the house voluntarily with someone, especially leaving behind her rings purse and handbag.

26. We are therefore unpersuaded that the evidence about the rock was a crucial part of the Crown's case at trial. As can be seen from the summing up, the position was far from that. This court, if leave were granted, would be applying the test in Pendleton as explained by Lord Brown of Eaton-under-Haywood in Dial [2005] UKPC 4 at paragraph 31:

> *"Where fresh evidence is adduced on a criminal appeal it is for the Court of Appeal, assuming always that it accepts it, to evaluate its importance in the context of the remainder of the evidence in the case. If the court concludes that the fresh evidence raises no reasonable doubt as to the guilt of the accused, it will dismiss the appeal. The primary question is for the Court itself and is not what effect the fresh evidence would have had on the mind of the jury. That said, if the Court regards the case as a difficult one, it may find it useful to test its view by asking whether the evidence, if given at trial, might reasonably have affected the decision of the trial jury to convict (Pendleton at p.83, para 19)."*

We cannot see that Dr Moncrieff's evidence would afford a ground for allowing the appeal against conviction for the reasons which we have indicated. That being so, this renewed application must be dismissed."

The CCRC Reference

90. The CCRC Reference is based on what is described as the "*cumulative effect*" of four separate reasons, summarised in the Reference as follows:

    (1) The prosecution failure to disclose evidence of MW's continued use and supply of drugs, capable of undermining the credibility and reliability of his evidence.

    (2) The prosecution failure to disclose evidence of Dr Tapp's contemporaneous opinion regarding the ability of the axe found at the appellant's house upon his re-arrest in 2004 to have caused the injuries to CP's face and teeth, which undermined "*the constant implication* [at trial] *that….the climbing-axe could be the murder weapon*".

    (3) New DNA evidence derived from samples taken from the inside of knots to the ropes binding the body, indicating the presence of male DNA inconsistent with the appellant.

    (4) The renewed importance of the expert evidence of Dr Moncrieff, referred to above, deployed at the application for leave to appeal in 2008.

91. The CCRC concluded that, in the light of the above, "*the balance of the case [had] shifted to such an extent*" as to merit a Reference to this court.

The Grounds of Appeal

92. Grounds 1,2 & 4 of the Grounds of Appeal reflect the first, second and fourth of the CCRC's reasons.

93. However, and significantly, the new DNA evidence which formed the basis of the third of the CCRC's reasons has been abandoned by the appellant as, after further consideration, it was concluded that the evidence did not support, even arguably, the proposition that it undermined the safety of the conviction – whether by implicating another or by exculpating the appellant. Instead, Mr Blaxland seeks to advance a new Ground 3, for which permission is, if necessary, sought.

94. The final Grounds of Appeal are accordingly as follows:

    (1) The prosecution failed to disclose evidence of the use and supply of drugs, capable of undermining the credibility of the prosecution witness Michael Wainwright, who gave evidence that the appellant had confessed details of the murder to him in the prison exercise yard.

    (2) The prosecution failed to disclose evidence of Dr Tapp's expert opinion that undermined the consistent implication that the appellant's (ice-axe), exhibit 1 at trial, could be the murder weapon.

(3) New expert evidence is available to the effect that the appellant's ice-axe was not used to cause facial injuries to the deceased.

(4) The expert evidence of geologist Dr Moncrieff presented to the Court of Appeal in 2008, that the expert evidence given at trial to the effect that (the) rock found near the body did not match rocks found near the lake but did match rocks from 'Bluestones' (Gordon Park's home) was unfounded, has importance in the context of the new grounds of Appeal.

95. We shall first summarise the general submissions made on both sides, then the background and arguments in relation to each Ground, the applicable legal framework, and finally turn to the merits - both individual and cumulative.

General submissions

(1) The appellant

96. Mr Blaxland submitted that, in 2008, the Court had fallen into error in stating, at [4] of the judgment, that it was formally admitted at trial that CP's injuries had been caused by an axe. The only Agreed Facts which referred to the axe in that context were numbers 36 & 37 - which dealt, respectively, with what had been reported in the national press and on the television news after the finding of CP's body, and in the "Ladies in the Lake" broadcast (which MW had seen and in which it was stated that CP's injuries had probably been caused by an axe).

97. Mr Blaxland relied on [171] of the CCRC's Statement of Reasons, in which the CCRC made observations as to weaknesses in the elements of the prosecution's circumstantial case to which reference was made in [25] of the 2008 judgment, and asserted that that evidence no longer pointed so strongly to the appellant, such that there was a real possibility that the Court would consider that his conviction is unsafe. The observations included the following:

(1) Aside from the incident witnessed by Mrs Walmsley there was no evidence that the relationship between the appellant and CP had ever been violent, and there was no evidence of any specific event that would have given the appellant a motive to harm CP in 1976.
(2) The only lie that the appellant admitted was the lie (on oath) in the custody proceedings in 1975.
(3) Dr Ide could not say that the appellant had tied the knots and it was conceded that the level of expertise required (although possessed by the appellant) was common amongst sailors and climbers in the Lake District.
(4) There was no evidence that the appellant's 505 dinghy was not kept at Lake Windermere as he said, and it did not match Mrs Young's description of a boat with a cabin, and maps and diagrams showed that the body was recovered about 100 metres from the eastern shore – albeit about 200 metres south of the beach at Bailiff Wood.
(5) Whilst the appellant was familiar with the area, it could equally have been argued that someone familiar with the lake would have deposited the body in the middle of it, where it was known to be deepest.

(6) Any similarity between the appellant and the description given by Mrs Young was of no consequence if the Youngs had been at the beach at Machell Coppice (from where they could not have seen the deposit of the body).
(7) Rather than suggesting that an intruder was responsible, the defence had focused on CP having left voluntarily, most probably with the man seen driving the VW by Mrs Dixon at about 11am.
(8) CP might have been wearing the pinafore dress when she left voluntarily, and if the body was packaged at 'Bluestones' the killer was more likely to have used a bag that was to hand, rather than making a bag from the dress.
(9) It might be, if CP had left 'Bluestones' willingly with the man in the VW Beetle, she would have been dressed and might have been intending to spend the afternoon with that man and then to return home that evening – taking her nightie with her to wear but having no need of her rings, purse and handbag for those few hours.

98. In addition, Mr Blaxland invited the Court to consider, amongst other things:

(1) The reasons why Mr Price had advised in favour of discontinuation in 1998, including the fact that CP had a history of separating from the appellant at short notice.
(2) The decision to prosecute in late 2003 / early 2004 was based on the evidence of MW and GB, both of whom had been discredited at the trial, and the evidence of Mr Lucas, who was not relied on at trial.
(3) The prosecution case was that CP had been killed by the appellant at home, but the way in which that was alleged to have been done ignored the logistical problems presented by the presence of their 3 young children, and the consequent likelihood of discovery – whether at the time of the murder (not least because the children's bedroom was next to their parents' bedroom) and the fact of the injury to CP's left hand, whether offensive or defensive, meant that it was likely that she had the opportunity to, and did, scream; during the inevitable clear up of what would have been a large amount of blood; during the packaging of the body which occurred within 4 hours of death; or in the period of around 12 days during which (on the prosecution case) the body was kept in the chest freezer in the garage. Likewise, the difficulties of moving the substantial weight of the body should not be underestimated.
(4) If the appellant was intending to, or had, dumped some of CP's clothing in the lake it was likely that he would have said at the time that she had taken some clothing with her.
(5) Likewise, if the appellant was the killer, he would not have told anyone that CP had left essentials, such as her handbag and purse, behind, and would have told the police that she had taken clothing with her.
(6) It was the appellant who produced the RYA logbook, which he would not have done if he knew that it undermined his account.
(7) If the Youngs were right, then the body had been dumped around 29 July – and sale of the boat immediately thereafter (to complete its sale before the end of July) was unrealistic.
(8) Whilst the appellant said that he did not recognise any of the 42 items of clothing, footwear, jewellery and cosmetics recovered from Coniston Water, their dating in the early 1970's and the fact that they were found not far from the body gave rise to a strong inference that they were CP's, and it would make no sense for the appellant to have randomly selected the items and then disposed of them in the

lake. Rather, the range of items was consistent with CP having taken them when she left home.

(9) There was no evidence to suggest why CP would have been travelling south on the Friday evening, which suggested that Mrs Baines' original memory (that she had seen CP at the Charnock Richard service station at about 6pm on Saturday 17 July 1976) was likely to be correct.

(10) Mr Short had a vague memory that, on Sunday 18 July 1976, the appellant had invited him and his wife in, but they had decided that it was not appropriate in the circumstances.

(11) Thus, in relation to the circumstantial evidence, there were perfectly proper points that both sides could make, and did make, during the trial, but the elements relied on by the prosecution had now been undermined to the extent that the court should doubt the safety of the conviction.

99. Against that background, and in conclusion, Mr Blaxland submitted that:

(1) MW's evidence was critical to the decision to charge the appellant and, whatever the weakness in it that were exposed during the trial, the prosecution had continued to place considerable reliance on that evidence, whereas the non-disclosed material would have destroyed MW's credibility.

(2) In its judgment in 2008 this Court took into account the evidential significance of the ice-axe whereas, because of the non-disclosure, that evidential element of the case could no longer be relied on.

(3) The new expert evidence bolstered the importance of the non-disclosed material.

(4) The prosecution's circumstantial case at trial had significant weaknesses.

(5) The acceptance that Dr Pirrie's expert geological evidence could no longer be relied upon meant that the overall balance of the evidential case had shifted to such an extent that the court could not be sure that, had the evidence which has now emerged been available at trial, the jury would have convicted the applicant.

(6) In those circumstances the conviction was unsafe.

(2) The respondent

100. On behalf of the respondent, Mr Richard Whittam QC submitted that there was a compelling circumstantial case against the appellant, and that any suggestion that CP had either simply left the matrimonial home or had otherwise disappeared was fanciful.

101. Mr Whittam submitted that the strands of evidence that together comprised the compelling circumstantial case were as follows:

(1) The marriage had experienced a number of difficulties. In 1974, the appellant had discovered that CP was having an affair. Later that year they had separated with her saying that she wanted a divorce and she had started a relationship with another man – and had separated from the appellant from September 1974 to August 1975.

(2) CP had returned to the matrimonial home in August 1975 after the appellant was awarded custody of their three children and because she did not want to live apart from them.

(3) Although CP had left the matrimonial home on previous occasions, she had always kept in touch with the appellant, her family and friends and had actively sought access to her children.

(4) CP had completed the summer term at the school where she taught on Friday 16 July 1976 and was not due to return until 2 September 1976.
(5) CP had given no indication to anyone of a plan or intention to leave the family home – as to which reliance was placed on the following events in the week leading up to her disappearance:
    (i) She had made it clear to colleagues at work that she was looking forward to, and making plans for, the summer holidays with her family, including a trip to Blackpool with her children.
    (ii) She was already planning and preparing for the autumn term at the school where she worked and took her professional obligations seriously.
    (iii) She had given her sister-in-law money towards the Christmas Club and had promised to bring a card and present round for her niece at the weekend.
(6) The appellant had told friends, on Sunday 18 July 1976, that CP had suddenly decided not to go with him and their three children on the trip to Blackpool the day before (i.e. Saturday 17 July 1976) and that, upon their return later that day, she had gone.
(7) The appellant was adamant that, on his return from Blackpool, the matrimonial home had been in its normal condition, that there were no signs of forced entry, or of a disturbance, nothing was broken and there were no signs of an assault or blood in the house.
(8) The appellant had made no enquiries, on his return from Blackpool, as to CP's immediate whereabouts - e.g. with the local hospital, doctor, friends or family.
(9) CP had left the matrimonial home without her wedding and engagement rings – whereas she had continued to wear them when she and the appellant had separated in 1974-1975.
(10) CP had left the matrimonial home without her handbag and purse and therefore with no access to financial means, which made no sense if she had decided to leave.
(11) CP had left the great majority of her clothes at the matrimonial home.
(12) CP had not withdrawn any money from her bank account or the bank account that she shared with the appellant.
(13) CP was still wearing her nightdress when her body was found.
(14) CP's body was found inside a man-made sack that had been produced by hand-stitching her black pinafore dress together.
(15) The appellant had not reported CP missing until Saturday 4 September 1976; and that he had done so via a solicitor.
(16) The appellant was a keen sailor and was familiar with Coniston Water having sailed on it since he was a child, In evidence he had accepted that CP's body had been found directly opposite where his family had a caravan when he was a child.
(17) The appellant owned and had access to a white boat in July 1976, and selling it after disposing of the body made sense.
(18) As a result of his sailing activities and the fact that he was also a climber the appellant was skilled in tying the wide range of knots that had been used to tie up CP's body.
(19) Subject to the jury being sure that Mr & Mrs Young were in the vicinity of Bailiff Wood rather than Machell Coppice, they had seen a male (described by Mrs Young as having brown / auburn hair and wearing a wet suit and glasses - which description matched the appellant) on a small white boat on the eastern side of Coniston Water topple a large bundle over the side of the boat.
(20) There was no credible sighting of CP after Friday 16 July 1976.

102. Given that the Reference had been made on the basis of the cumulative effect of the reasons relied on by the CCRC, it was not without significance that the DNA evidence was no longer relied on and that the original Ground 3 had been abandoned by the appellant.

103. In the result, Mr Whittam submitted, the Appellant's conviction was safe. The evidence considered in its entirety was strong and, although it was submitted that there were matters of concern arising from non-disclosure and fresh evidence, they were not such, after an overall assessment of the case, to affect the safety of the conviction.

Ground 1 – Non-disclosure of MW's use and supply of drugs

104. As touched on above, during the course of his evidence MW said, amongst other things, that he had been using substantial quantities of drugs for some 14 years; that he was a long-tern cannabis user; that in 1997 he had additionally used cocaine, LSD, amphetamine, whizz and trips; that he had stopped using the more serious drugs in 1997 (as he had wanted to look after his girlfriend, who had asked him to come off them, and his stepson); that he had continued to use cannabis (latterly smoking around 15 joints per day); and that since 1997 his mental processes (including his memory) had gradually been getting worse and worse because of his substantial use of cannabis.

105. It is common ground that there was a prosecution conference at the chambers of Mr Webster on 22 June 2004; that DS Marshall (who had been in contact with MW on 10 June 2004) was present; and that a note of the conference was made by a CPS Caseworker, who recorded that:

> "*"Wainwright now says that Park told him (Wainwright) that he had buried the axe between the boathouse and the shoreline – now coming off heroin (AW) – record further info – disclose/serve?"*

106. The witness statement that MW made on 16 July 2004 dealt with the burial of the axe, but there was no reference to him coming off heroin, and no other disclosure was made of that information.

107. The respondent has not been able to find any record to show that MW mentioned that he was coming off heroin to DS Marshall on 10 June 2004, and underlined in argument that there was nothing to suggest that the information had been deliberately withheld. However, the respondent accepted that that information should have been disclosed - as (viewed at that time) it had the potential to undermine the content of MW's 16 July 2004 witness statement. The appellant argued that, in any event, the information should have been disclosed once MW had claimed in evidence that he had stopped taking hard drugs in 1997 – as it could have been deployed to demonstrate that he was lying on oath.

108. It is also common ground that on 19 January 2005 (the day before the last defence witness was called in the appellant's trial) MW was arrested by Lancashire Police and charged with supply of, and possession with intent to supply, amphetamines and cannabis, said to be worth £19,000; and that that information was not disclosed.

109. Further, and also undisclosed to the appellant, on 22 February 2005 (i.e. nearly 4 weeks after the conclusion of the appellant's trial), MW pleaded guilty in the Crown Court at

Preston to a total of 10 counts of supplying and possession with intent to supply of Class B and C drugs in the period between 1 January 2004 and 19 January 2005, and was sentenced to a total of 20 months' imprisonment.

110. On behalf of the appellant, Mr Blaxland argued that information as to the fact and circumstances of MW's arrest on 19 January 2005 should have been disclosed at trial, and that (taken together) that information and the information about MW coming off drugs was capable of further undermining MW's credibility and reliability, and would have enabled the appellant to explore whether his supplying activities had been funding his heroin use, and/or whether he was under the influence of drugs when making his 2004 statements and/or when giving evidence.

111. On behalf of the respondent, Mr Whittam submitted that it was not clear when (if at all) the facts of either MW's arrest or conviction had been brought to the attention of the prosecution. In any event, he argued, the facts and/or circumstances of the arrest and conviction were not relevant to an assessment of MW's credibility and/or reliability, and would not have permitted the appellant to explore the matters now asserted in cross-examination.

112. In addition, Mr Whittam submitted, the failure(s) to disclose had to be seen in the light of MW's evidence (as recorded in the transcript) that:

(1) He had a number of previous convictions.
(2) In February 1997 he had tried to suffocate his four-month-old stepson as a cry for help.
(3) He had been dependent on cannabis for 14 years and smoked about 15 joints a day.
(4) He had been prescribed sleeping pills and anti-depressants for depression.
(5) He had been admitted to a psychiatric ward on four previous occasions.
(6) He had difficulties in controlling himself and could become very violent.
(7) He had difficulty in remembering things, his mental function was affected by his substantial drug use, he had noticed that his mental processes had been getting worse and worse since 1997, and he had suffered blackouts.
(8) He was someone who doctors did not believe.
(9) He had suffered from suicidal thoughts.
(10) He had blamed paranormal forces for his actions and the fact that his home was possessed by a poltergeist.
(11) He had a history of hearing voices from 1997 which had persisted in 2000.

113. Mr Whittam further submitted that the failure(s) also had to be seen against the background (again by reference to the transcript) that MW had been cross-examined as to the fact that:

(1) He had not told the police at the time (i.e. in 1997) that the appellant had confessed to him.
(2) He had first spoken to the police some 3 years later – and only after watching the Channel 4 documentary.
(3) He had made three witness statements to the police (in October 2000, July 2004 and November 2004) each of which had contained further information.
(4) He had only remembered in June 2004 that the appellant had told him that he had buried the axe implement that he had used to kill his wife.

(5) He had purported to remember further details of the appellant's confession for the first time in his November 2004 statement (which was made just before he gave evidence).
(6) He had only met the appellant once, during a 30-minute exercise period in the exercise yard, in the course of which the appellant had confessed, in some detail, to murdering his wife.
(7) There were significant discrepancies between the content of his three witness statements and his evidence.
(8) Part of what he claimed the appellant had confessed to him came from other people.

114. Thus, Mr Whittam submitted, the jury had been appraised of MW's character, criminal activities and mental health difficulties and, during the course of cross-examination, the appellant had been able to explore the matters set out above. Indeed, the CCRC had concluded that Mr Edis had "*conducted a robust cross examination of (MW) by reference to his drug abuse, his failure to come forward before the television programme which had included most of the details that he had recounted, and all the changes, inconsistencies and inherent difficulties in his various accounts*".

115. In the result, Mr Whittam argued, the jury had been able to assess both MW's credibility and reliability as a witness and had not been left with a false impression – particularly against the background of the warnings to them, from both the prosecution and McCombe J, of the need to approach MW's evidence with "*extreme caution*". Thus, to the extent that there had been a failure or failures to disclose, the failure or failures amounted only to "*more of the same*", and thus the appellant's conviction was safe.

116. Mr Blaxland submitted that the information was not "*more of the same*". Notwithstanding the skill and effect of the cross-examination of MW, the appellant had not been able to deliver a knockout blow to MW's evidence. MW's claim that his memory had got worse since 1997 because he had stopped taking hard drugs was significant - as it was his explanation for the shifts in his accounts. Disclosure of the 2004 information would have enabled the appellant to demonstrate in cross-examination that that explanation was a lie on oath to the jury, which would have been a good point for the appellant. Likewise, given the prosecution's knowledge of that information, MW should not have been re-examined (as he was) in a way that enabled him to say that he had stopped using hard drugs (in 1997) because he wanted to come off them.

117. Equally, Mr Blaxland emphasised, Mr Webster had made clear to the CCRC that, if he had been aware of the information in relation to MW's arrest on 19 January 2005, it would have been disclosed. It too was significant information – in that the impression given by MW that he was confused and vulnerable would have been wholly undermined by the revelation that he had been (and was still) involved in long-term commercial drug supply.

118. At all events, Mr Blaxland submitted, MW was an important witness and, for all the problems with his evidence, it was impossible to know what the jury had made of him – the more so as the respondent had relied on the finding of the axe at the appellant's then home in 2004 as supporting MW's evidence. In the result, the undisclosed information might have had a significant impact on MW's reliability and credibility. Therefore, the non-disclosure of that information rendered the appellant's conviction unsafe.

Ground 2 – Non-disclosure of Dr Tapp's opinion in relation to the wooden ice-axe

119. Combining the Perfected Grounds and his oral submissions, Mr Blaxland summarised this Ground as follows:

    (1) The jury was specifically told that the murder weapon could have been an axe.
    (2) The wooden ice-axe was found at the appellant's house in 2004.
    (3) Nevertheless, and although they did not spell it out, the prosecution had left the jury with the impression that the ice axe could be the murder weapon – which was not a peripheral issue. Indeed, the fact that the defence cross-examined Mr Shaw about it can only have been because of the belief that the prosecution were pursuing the ice axe as a possible candidate. It was also telling that, in 2008, this Court, at [4] of the judgment, had referred to CP's injuries and said that those to the front teeth were consistent with having been struck with a blunt instrument, possibly an ice pick, had immediately referred to the finding of the axe and then recorded (in fact in error) that it had been formally admitted at trial that the facial injuries had probably been caused by an axe.
    (4) Before the trial there was material non-disclosure (accepted by the respondent) of Dr Tapp's opinion that he did not think that the ice axe was the murder weapon.
    (5) The non-disclosure was relevant to two issues at trial:
        (i) The coincidence of the appellant's possession of an unusual item that happened to be a good candidate for the murder weapon.
        (ii) MW's reference to the appellant's alleged confession that he had used a climbing axe.
    (6) The fact of the non-disclosure caused doubt to the safety of the conviction.

120. The appellant's submissions in relation to this Ground also involve assertions of non-disclosure after the trial.

121. As indicated above, at the Inquest in 1997 Dr Tapp opined that the most likely cause of death was facial injuries caused by blows with a heavy sharp object, which could have been an axe or a chopper. An agreed Schedule and Transcript of an interview for a television documentary (which we append hereto) detail relevant aspects of what Dr Tapp has also been recorded as saying over the years (from his Coroner's Report dated 15 October 1997 to his CCRC witness statement dated 9 May 2018) about the type of weapon used to inflict the facial injuries.

122. As to non-disclosure before trial, Mr Blaxland relied upon the following:

    (1) On 12 May 2004 Dr Tapp was visited by DS Marshall, and (although there was no definitive record) it was highly likely that it was on that occasion that Dr Tapp examined the wooden ice-axe that had been recovered from the appellant's then home.
    (2) On 26 May the CPS wrote to DS Marshall informing him that Mr Webster was asking if Dr Tapp had examined the ice-axe so as to consider if it could have been the murder weapon.
    (3) In a CPS minute sheet dated 2 June 2004 it was recorded that DS Marshall had reported that Dr Tapp had examined the ice-axe and had said that he "*did not think*

that it was the murder weapon although he believes that the murder weapon was an axe".

(4) As recorded in a CPS note, that opinion was communicated to the prosecution lawyers at a conference (which Dr Tapp did not attend) on 22 June 2004.

(5) As recorded in a note made by Mr Webster, Dr Tapp attended a conference with the prosecution lawyers on 7 September 2004 and opined that it was impossible to identify a particular weapon with certainty – albeit that a CPS Branch Crown Prosecutor who was present at the conference later recorded in a book that Dr Tapp had said that the injuries were more likely to have been caused by a hand held axe. (Mr Webster recorded Dr Tapp as saying that: "*The axe which was recovered had a long handle. If it had been held at the end, it would have been an unwieldy implement. There is nothing which would exclude the axe as the cause of the injuries, but the missing bone fragments make it impossible to identify a particular weapon with any certainty….the downward grooves in the teeth could have been caused by the claw of a hammer. They are suggestive of a sharp edge…*".)

(6) In the Respondent's Notice it was accepted that none of the notes/records made on 2 June, 22 June or 7 September had been disclosed to the defence, and that that amounted to material non-disclosure.

123. As to events at the trial, Mr Blaxland underlined the following:

(1) The wooden ice-axe is mentioned twice in the typed copy of the Opening. Firstly, as to when and where it was found. Secondly, as to MW's evidence, as follows:

> "*GP opened up to him and told him that he had killed his wife. He had strangled her until she had passed out. He had then hit her with various objects, one of which (MW) recognised by its description, as a climber's ice-axe……He had no further dealings with GP and had no motive to lie to implicate him. Further, you will remember that a climber's axe was recovered from GP's home, when it was searched in 2004, following his final arrest*."

(2) During the course of his evidence MW said that the appellant had told him that he had used an axe implement with a black handle with a metal shaft with an axe shape at one end and a pick at the other – which he (MW) had understood to mean an ice-axe which would be used for rock climbing, which he (MW) had done himself. He also said that the appellant had told him that he had buried the axe near a boat house near Coniston Water.

(3) Paul Shaw, a friend of the appellant, who came forward during the trial and was called by the respondent, was shown the ice-axe (which he had borrowed from 1991-1994) by Mr Edis in cross-examination and opined that he could not countenance the idea that the appellant had used the ice axe in the dreadful manner that might be being suggested.

(4) Dr Tapp's evidence was that CP's facial injuries had been caused by a minimum of two blows from a heavy object with an edge to it and (in re-examination) that an axe was the sort of object used and that he was sure that there had been a minimum of two blows with something with a sharp edge.

(5) The note for Mr Webster's closing speech shows that he said that it was important to consider MW's evidence, as that of any other witness, and to see how it may be supported by other independent evidence, and that there were elements of MW's evidence that were supported by common sense and the evidence. The note continued:

> "*There is no suggestion that that the use of an ice axe was mentioned on any TV programme. If this was an invention on Wainwright's part, it was an extraordinary coincidence (one of many which the defence will have to rely on) that it just happens that D was a climber and had, to our certain knowledge, a climbing axe. Bear in mind, of course, that he described a black axe, whereas the one recovered from D was wooden, an ice axe nevertheless."*

124. Mr Blaxland also prayed in aid the recollections of both leading counsel - as given by them, many years after the event, to the CCRC.

125. Mr Webster said that the combination of the ice-axe, knots, knowledge of Coniston and access to a boat was all very strong circumstantial evidence; that the mention of an ice axe in MW's account was the most significant part of his evidence, which had given significant colour to his account; that it was his recollection that the respondent's case was that the ice axe might have been the murder weapon and that it was a good candidate; and that whilst the prosecution could not prove that the ice-axe might have been the murder weapon, ice-axes were unusual and the fact that the appellant had one provided some evidential weight.

126. Mr Edis recollected three matters in relation to the ice-axe – that the respondent had presented it as an implement that could be the murder weapon; that it was shown to the jury as a possible murder weapon; and that he believed that it was said by the respondent that Dr Tapp's view was that it was consistent with the murder weapon. Mr Blaxland accepted that Mr Edis's recollection was "*not perfect*" as, for example, it was, in fact, him who had shown the ice-axe to the jury when he produced it to Mr Shaw in cross-examination, after which it had become Exhibit 1. However, Mr Blaxland pointed out that Mr Edis had gone on to say to the CCRC that if he had known that Dr Tapp had not thought that the ice-axe was the murder weapon, he would have asked Dr Tapp in cross-examination to comment on how likely it was for that the appellant's ice-axe could be the murder weapon, because it was key to MW's credibility.

127. Mr Blaxland further submitted that there was also non-disclosure after trial, relying on the following:

    (1) On 1 March 2005 (i.e. after the trial and before the application for leave to appeal) the appellant's solicitors had written to the CPS querying whether any material had been disclosed about the ice-axe having been shown to Dr Tapp, and as to any opinion by Dr Tapp on the issue of whether it was the murder weapon.
    (2) The CPS employee to whom the note dated 2 June 2004 (which recorded that Dr Tapp had examined the ice-axe and "*does not think it was the murder weapon*") had been addressed, and who had also written the note dated 22 June 2004, liaised with DS Marshall and sent him the solicitor's letter.
    (3) DS Marshall replied that: "*DC Wallace and myself took the axe to Dr Tapp's home. He wasn't able to say if it was the murder weapon or not*." Thus, DS Marshall had failed to mention that Dr Tapp had been recorded as saying that he "*did not think it was the murder weapon*".
    (4) The CPS employee replied to the solicitor on 16 March 2005 stating: "*DS Marshall and DC Wallace showed the axe in question to Dr Tapp, but he was unable to say whether it was the murder weapon*".

(5) The CCRC concluded that this amounted to further and serious non-disclosure.

128. As to post-trial expressions of opinion in relation to the likelihood of the wooden ice-axe being the murder weapon, Mr Blaxland drew attention to the following:

(1) On 9 May 2018 Dr Tapp was shown the wooden ice-axe by the CCRC and (in a witness statement made on that day) stated that it was unlikely that it had caused the injuries to CP's skull "*although this cannot be excluded*". Dr Tapp was reminded that at the Inquest he had said that an axe or chopper could have caused the facial injuries and explained that he did not mean the axe blade but rather the flat head opposite the head, which the ice-axe did not have. He continued:

> "*I wish to make clear that when I say it was a sharp edge from a heavy instrument and much has been suggested as to the implement being an axe, I am not referring to the blade of an axe. I am referring to the head of the axe which normally is a machined block of metal with edges to it. If it was an axe, then the contact to cause the injuries to the skull came from the head of the axe and not the blade".*

(2) On 9 July 2018 the defence pathologist, Dr Lawler (who had been instructed prior to the trial and had undertaken a post mortem examination), made a witness statement to the CCRC in which he said that he could not recall any discussion about an ice-axe with defence counsel in 2004. He went on to state:

> "*I would say that the ice axe is like a small pick-axe. It has a long wooden handle or shaft with a 'spike' at the bottom and two blades at the top – one side is a long 'pick' and the other side is a curved 'axe'. This ice-axe does not have the flat rectangular opposite face that most standard axes would have. In my view, it is extremely unlikely that either the 'spike' or 'pick' of this ice axe could have caused Carol Park's facial injuries, but I could not absolutely discount the curved 'axe' of this implement. I think it is unlikely that an ice axe such as this caused the facial injuries, but I cannot exclude the possibility."*

(3) In a witness statement made (with this Court's approval) on 10 October 2019, Dr Tapp further explained why, in his CCRC witness statement made in May 2018, he had said that it was unlikely that the ice axe was the weapon that had caused the injuries to CP's skull, as follows:

> "*Firstly, from memory it has a longish axe and was an unwieldy thing to use, striking with it would have been difficult. That was a point that I have made previously. The 2nd point where I may have misled people was that the axes have two ends to them, a heavy piece of metal that has an edge to it and a sharp blade. I came to the conclusion that it would be the blunt end and not the sharp end. If it were the sharp end there would be sharp cuts and damage to the teeth and would be individual and not in groups as we have here. If you look at the photographs from 20 yrs ago there were scrapes down 2 or 3 so something wider. The ice axe is fairly narrow. I would like to have seen it again. I don't believe it was of sufficient weight to cause the damage. As I have said before, it is I believe unlikely, but I cannot exclude it. I believe I made that statement in all of my previous statements.*"

129. Mr Blaxland asserted that there was another aspect of non-disclosure in relation to the wooden ice-axe, namely as to the fact that a search had been made near boathouses on

Coniston Water for a small axe, possibly a kindling axe, rather than an ice axe. In that regard he relied on the following;

(1) During cross-examination of MW Mr Edis referred to the fact that the police had been to see if they could find the ice-axe in the place where MW had asserted that the appellant had told him that he had buried it and said: "*...if they had found it we would have been told by now.*"
(2) The CCRC had recorded, in the context of MW's statement of 16 July 2004, that subsequent police searches had failed to find any buried axe or other weapon near any boathouse around Coniston Water.
(3) In response to a query from the appellant's solicitors, on 25 October 2019 correspondence was disclosed in relation to the intended search in the vicinity of boathouses – in which it was recorded that the search was for:
"*An outstanding weapon from the murder of Mrs Park, Coniston, over 21 years ago is a small axe, possibly a small kindling axe. This is believed to have been buried between a boat house and the lake.*"
(4) The search for a small axe and not an ice axe could only have been because the police understood that Dr Tapp had excluded an ice-axe, and thus the fact that the police were looking for a small axe and not an ice axe should have been disclosed because it demonstrated that the prosecution did not believe that an ice-axe had been used to cause the facial injuries to the deceased.

130. As to the general merits of this Ground, Mr Blaxland argued that:

(1) The respondent had accepted that there was material non-disclosure, before trial, via the failure to disclose Dr Tapp's opinion that he did not think that the ice-axe was the murder weapon – which was important because, by the end of the trial, the jury had been left with the impression that the ice-axe either was the murder weapon or (at the very least) that it was a good candidate for the murder weapon, which was a false impression.
(2) Whilst the Respondent asserted that it was never contended at trial that the ice-axe recovered from the appellant's home was the murder weapon, it was notable that the defence had felt compelled to deal with the issue by showing it to Mr Shaw in cross-examination, and that Mr Webster's recollection was that the prosecution had put it forward as being a good candidate.
(3) Further, Dr Tapp's evidence about an axe, without the qualification that he has since given as to the facial injuries being caused by the flat head on the opposite side of the blade, had the effect of wrongly leading the jury to believe that the prosecution's expert was including the ice-axe as a candidate for the murder weapon.
(4) The respondent had also accepted that a witness statement should have been taken from Dr Tapp encompassing the opinions (above) that he had expressed in the period from May to September 2004, in which event, after service or disclosure, and as Mr Edis had told the CCRC, he would have been cross-examined about what he had said – in particular that, in effect, he was inclined to rule out the ice axe.
(5) It would be surprising if trial counsel on both sides were wrong about their sense that the jury was left with the clear impression as to the candidacy of the ice axe as the murder weapon.
(6) The significance of the ice-axe had been appositely identified by this Court in 2008 in the following passage from the judgment:

"*...with the teeth having been struck with a blunt instrument, possibly an ice pick. An ice-axe was one of the items found at the applicant's home. At trial it was formally admitted that Mrs Park's facial injuries had probably been caused by an axe.*"

(7) The truth of MW's evidence that the appellant had confessed to him was apparently corroborated by the prosecution's contention that the recovered ice-axe was a good candidate for the murder weapon – indeed, Mr Webster had described it as the most significant part of his evidence, and Mr Edis had opined that it was the key to MW's credibility.

(8) The disclosure that, when searching for the axe to which MW had referred, the police were looking for a small axe rather than an ice-axe demonstrated that the prosecution knew full well that MW's reference to the appellant using an ice-axe was unreliable, and thus allowed the defence and the jury to be positively misled about a significant aspect of the evidence, and if the jury had known that Dr Tapp's opinion had been withheld from them by the prosecution they may have entertained doubts about the integrity of the investigation and prosecution of the appellant – which was, alone, sufficient to render the conviction unsafe.

131. Mr Whittam submitted that it was necessary to consider three matters with care - namely the accounts of Dr Tapp regarding the weapon used to inflict blunt force trauma to CP; whether the prosecution failed to disclose any of Dr Tapp's accounts to the defence; and whether at trial the prosecution ever suggested that the ice-axe (Exhibit 1) could be the murder weapon.

132. Mr Whittam submitted that Dr Tapp had consistently stated throughout, amongst other things, that CP's facial injuries were the result of several deliberate impacts on the central part of the face – which could have been in the form of blows with a heavy blunt object or by kicks, but the appearance of the teeth and the anterior border of the zygoma suggested strongly that the implement also had a sharp edge on it and that the central part of the face had been destroyed by at least two blows in a downward direction.

133. Mr Whittam submitted that it was clear that Dr Tapp had been repeatedly asked whether he was able to offer an opinion as to what the heavy, blunt and sharp object may have been and, by reference to the extracts in the agreed Schedule and Transcript (appended hereto) and Dr Tapp's statement of 10 October 2019 (above), Mr Whittam took the Court through what Dr Tapp has said on the issue over the years.

134. Mr Whittam also pointed out that new reports from odontologists (Dr Evans for the appellant and Dr Marsden for the respondent) agreed that the damage to CP's teeth was not artefactual, but as a result of decomposition.

135. As to disclosure, and as indicated above, Mr Whittam accepted that the CPS minute sheet dated 2 June 2004 and the notes of the conferences on 22 June 2004 and 7 September 2004 should have been disclosed, given Dr Tapp's status as an expert witness, and that a further witness statement should have been taken from Dr Tapp.

136. Nevertheless, Mr Whittam submitted:

(1) There was nothing to suggest that the contents of the notes were deliberately withheld from the defence in bad faith.

(2) The content of the notes did not undermine the way in which the case was put by the prosecution at trial.
(3) Notably, there was no reference in the prosecution's opening or closing notes, or in the summing up, that suggested and/or left open the possibility that the appellant's ice-axe could be the murder weapon.
(4) Rather, the CPS note of Dr Tapp's evidence recorded him as saying (in answer to the prosecution) that the instrument used to inflict blunt force trauma to CP was "*a heavy object with edge to it…an instrument with a sharp edge….an axe is the sort of instrument causing this injury"*; and in summing up McCombe J said that Dr Tapp's evidence was that: "*the blows would have required a heavy instrument, probably with a sharp edge, and in his* (Dr Tapp's) *view it was an axe that usually causes injury of this type.*"

137. Further, Mr Whittam submitted that there was no evidence that the prosecution had ever suggested at trial that the wooden ice-axe (Exhibit 1) could have been the murder weapon. In support of that submission he relied on the following matters:

(1) The wooden ice-axe was listed on a schedule of unused material dated 27 October 2004.
(2) It was very different from the ice-axe which MW alleged that the appellant had described to him – which said to have a black handle and a metal shaft
(3) Shortly before trial in November 2004 the appellant's solicitors had requested that the wooden ice-axe be released for examination by the defence facial reconstruction expert, Dr Evison, and had signed an undertaking regarding its safe conduct. However, no expert report from Dr Evison was ever served.
(4) It only became an exhibit when it was shown to the witness Mr Shaw during the course of his cross-examination by Mr Edis.
(5) Mr Webster was present at the conferences on 22 June 2004 and 7 September 2004 and never showed Dr Tapp the ice-axe in evidence and never elicited from him, nor suggested to him, that the injuries could have been caused by it.
(6) Rather, the prosecution made clear that the relevance of the wooden ice-axe (which had been recovered from the appellant's then home in 2004) was that it supported MW's contention that he had had a conversation with the appellant, which the appellant denied.
(7) The prosecution point was that, given that the appellant denied that he had ever spoken with MW, it was a striking coincidence that the conversation which MW said that he had had with the appellant included reference to an ice-axe and an ice-axe had then been found at the appellant's home - albeit a wooden one.

138. Thus, Mr Whittam submitted, the entire basis of this Ground was the notion that the prosecution consistently implied that the appellant's wooden ice axe, Exhibit 1, could be the murder weapon, whereas it could be demonstrated (as above) from contemporaneous documentation, rather than the recollections of Mr Webster and Mr Edis, that that was not the case, and therefore, notwithstanding the prosecution's disclosure failings, the appellant's conviction was safe.

139. Further, or in the alternative, Mr Whittam submitted that, when considering whether the appellant's conviction is safe, the Court might wish to consider whether the ice-axe could properly be excluded as the murder weapon, and thus to take into account the evidence of Dr Fegan-Earl, a Consultant Forensic Pathologist instructed by the Respondent to

consider the type of weapon that was used to inflict the injuries to CP's face, and the evidence of Dr Kolar, a Pathologist on the Specialist Register of the GMC instructed by the appellant to review the pathological aspects of the case and to respond to the report of Dr Fegan-Earl.

140. Dr Fegan-Earl had variously concluded that:

> "*It is reasonable to suggest that there is a combination of blunt and sharp force trauma on the facial skeleton, and this tends to raise a specific subset of candidate weapons that can cause both blunt and sharp force injuries…this then does indeed raise the possibility of the use of an object such as…an axe…the ice-axe could not be excluded as a candidate weapon…Whilst the bones still bear hallmarks of the assault, the absence of soft tissue in its original form severely hampers the pathologist in considering the definite weapon type, albeit even in a freshly dead body this may not be possible. Whilst it is telling in the presence of both blunt and sharp force trauma, if one accepts the use of a single weapon then realistically the only category of weapons that could be responsible would be heavy chopping weapons that allow the production of both blunt and sharp injuries. This must include axes….I do not believe that there are any features that must indicate that it was the ice axe, but it could not be excluded"*.

141. Dr Kolar was provided with various post mortem and facial reconstruction photographs in relation to CP. In his first report, dated 18 September 2019, he noted that (in relation to the reconstruction) Dr Tapp had referred to a sharp edge to the fracture of the left zygoma but that there was no photograph of the left zygoma that was of sufficient quality for him (Dr Kolar) to interpret. If, however, Dr Tapp's description was accepted, then the narrow edge of the implement (if there was only one) was sharpened to some extent. He observed, nevertheless, that there was at least one relatively clear and crisp lower edge to the fracturing, suggesting an edged implement, and thus a conventional axe could easily have caused the facial injuries. Equally, he concluded, the ice-axe could not be excluded pathologically as the cause of the maxillary fractures - but nor was there any evidence that indicated that the ice-axe must have been the weapon used.

142. Thereafter, Dr Kolar was provided with the reports of Dr Marsden and Dr Evans (who, as indicated above, had concluded that the damage to CP's teeth was the result of decomposition, and not the product of any blow with an implement) and with better quality copies of the photographs (which had been made from the original negatives). In his Addendum Report, dated 29 October 2019, Dr Kolar opined that, still absent a photograph of sufficient quality of the fracture to the left zygoma, the use of an in part sharp edged implement could not be confirmed or refuted. From his perspective, all that could be said was that impacts with a linear edged, probably narrow edged, object arose. He did not change his opinion that the ice-axe could not be excluded.

143. Therefore, Mr Whittam submitted, the evidence of all four pathologists was that the wooden ice-axe could not be excluded as a potential candidate weapon, which undermined any suggestion that the appellant's conviction was unsafe due to the non-disclosure of Dr Tapp's expressions of opinion as recorded on 2 June 2004, 22 June 2004 and 7 September 2004.

Ground 3 – New expert evidence in relation to the wooden ice-axe

144. As indicated above, this appeal is the result of the appellant's conviction being referred to this Court by the CCRC, under the provisions of s.9(1) of the Criminal Appeal Act 1995. By virtue of s.9(2), the reference is to be treated for all purposes as an appeal under s.1 of the Criminal Appeal Act 1968.

145. As to the Grounds upon which such an appeal can be pursued, s.14 of the Criminal Appeal Act 1995 (as amended) provides that:

> "*….(4A) Subject to subsection (4B), where an appeal under section 9…is treated as an appeal against any conviction…the appeal may not be on any ground which is not related to any reason given by the Commission for making the reference.*
> *(4B) The Court of Appeal….may give leave for an appeal mentioned in subsection (4A) to be on a ground relating to the conviction….which is not related to any reason given by the Commission for making the reference…"*

146. As also indicated above, this is a new Ground which is sought to be advanced against the background of the abandonment of the original Ground 3, which was concerned with new DNA evidence in relation to the rope used to bind CP (which was one of the reasons given by the CCRC for making the reference). Mr Blaxland submitted that the new Ground falls within s.14(4A) and thus does not require leave, but that if (as argued by Mr Whittam) leave was required it should be granted.

147. As to the Ground itself, Mr Blaxland underlined that:

(1) In his witness statement, dated 3 November 1997, Dr Tapp had commented on the appearance of the bone fragments following a reconstruction of CP's skull, and about the cause of the injuries, as follows:
> "*The reconstruction also demonstrated damage to the roots of the upper teeth on each side. Moreover, it appeared that the anterior border of the zygoma on the left side has a sharp edge suggesting that it had been cut rather than fractured at this site……The injuries are the result of several deliberate impacts on the central part of the face. These could be in the form of blows with a heavy blunt object or by kicks, but the appearance of the teeth and the anterior border of the zygoma suggests strongly that the implement also had a sharp edge…*".

(2) In his report Dr Fegan-Earl (as indicated above, the pathologist instructed by the respondent, who agreed that the ice-axe could not be excluded as the murder weapon) had commented as follows on Dr Tapp's findings:
> "*He refers then to the sharp edge of the left zygoma and the shaving of the teeth and that an axe or chopper could have done this but not a piece of wood. I agree with this view, since a piece of wood would not produce sharp force trauma.*"

(3) In his first report Dr Kolar (as indicated above, the pathologist instructed by the appellant in this appeal) had commented and observed that:
> "*In summary there is no imagery demonstrating the injury to the zygoma that suggested to Dr Tapp that a sharp edge had been used. No other pathologist or anthropologist appears to have seen this injury……The teeth do demonstrate apparent sharp force related injuries, but this should be*

> *confirmed with and interpreted by a dentist. Assuming it is confirmed as such I agree that the injuries demonstrate a profile of both sharp and blunt force characteristics. When a single implement causes a spectrum of injuries that overlap with both sharp force and blunt force it is known as a 'chop wound'. The implements include axes, machetes and similar objects.*"

(4) Consequent on that recommendation (and as indicated above) two forensic odontologists, Dr Evans (for the appellant) and Dr Marsden (for the respondent), had been instructed.

(5) Dr Evans' initial opinion was that the damage to the teeth was consistent with a combination of non-traumatic causes, but that damage caused by being struck by a sharp object could not be excluded.

(6) Dr Marsden had concluded that:

> "*It is my opinion that the damage seen on the teeth in this case is as a result of dissolution to the root surface due to the environmental conditions they have been in for a lengthy period of time. These conditions have also damaged the bone of the jaw…but have not been aggressive enough to damage the least susceptible and hardest dental enamel. I do not believe any implement was involved in the damage to the teeth.*"

(7) Thereafter, Dr Evans had expressed himself as being in agreement with Dr Marsden, save that he was reluctant absolutely to exclude the possibility of such damage to the teeth having been caused by the use of an implement.

148. Against that background, Mr Blaxland submitted that:

(1) The expert opinion of the two odontologists not only excluded the ice-axe as having caused injury to CP's teeth, but also created significant doubt as to whether a sharp edged implement was used to cause any of the injuries to her face. Although Dr Evans was reluctant to exclude the theoretical possibility of traumatic damage, he had nonetheless agreed with Dr Marsden that the damage to the teeth was consistent with natural causes, and had pointed to the absence of any previous case in which the so-called shaving feature seen by Dr Tapp had been caused by trauma.

(2) Dr Tapp's view that a sharp edged object was used was based on his observation of the combination of the damage to the teeth and the edge of the zygoma.

(3) It was now clear that Dr Tapp was wrong about the teeth – which raised the question of what reliance could safely be placed on his opinion, given that the opinion was clearly influenced by his assessment of the damage to the teeth, and no other pathologist had seen the damage to the left zygoma.

(4) Had the new expert evidence been available at trial, it would not have been agreed (in Agreed Fact 36) that the injury to CP's face was probably caused by an axe – although (we observe) Agreed Fact 36 was not concerned with the pathological evidence, but rather with what had been reported in the national press and on the television news (which related to the evidence of MW).

(5) The new expert evidence tended positively to exclude the ice axe (or any axe) as being the implement which was used to cause the injury.

149. As to what had been done on this issue prior to and at the time of the trial, Mr Blaxland submitted that:

(1) Whilst it appeared that the appellant's then lawyers had contemplated instructing a facial reconstruction expert (Dr Evison), that had not been pursued.

(2) Whilst a file note of a discussion between the appellant's then solicitor and the pathologist, Dr Lawler, indicated that there had been a discussion about whether the facial injuries could have been inflicted by the ice-axe, during which it appeared that Dr Lawler had said that, in theory, an ice axe could "*cave in the face of a person*", Dr Lawler had no recollection of such a discussion.
(3) There was no explanation as to why neither the prosecution nor the defence had instructed a forensic odontologist at the time of the trial, but it seemed that, having been informed by Dr Lawler that the ice-axe could have been used to inflict the injuries, the defence had not taken the matter any further.
(4) Nevertheless, in all the circumstances, the evidence of Drs Kolar, Evans and Marsden should be received by the Court in the exercise of its power under s.23 of the Criminal Appeal Act 1968.
(5) In any event, the Court was not circumscribed by the conditions in s.23(2), but had an overriding discretion to receive the evidence if it thought it necessary or expedient in the interests of justice to do so – per Lord Bingham at [10] of his speech in *Pendleton* (below).
(6) In this case the interests of justice required the reception of the evidence, as it had been obtained consequent on the instruction of Dr Fegan-Earl on behalf of the respondent, and was plainly relevant to an important issue in the appeal.

150. As indicated above, Mr Whittam submitted that this Ground requires leave under s.14 of the Criminal Appeal Act 1995 (as amended), and that it was difficult to see how it was related to the reasons given by the CCRC for the Reference. He further submitted that, in considering whether to grant leave, the Court should consider whether to admit the fresh evidence under s.23 of the Criminal Appeal Act 1968. In that regard, he underlined the appellant's instruction of Dr Evison prior to the trial, and the opinion given to the defence by Dr Lawler, also prior to the trial, that the ice-axe could have been used to inflict the injuries.

151. If the Court granted leave, Mr Whittam submitted that the new evidence relied on did not support the assertion that the appellant's wooden ice axe was not used to cause the facial injuries to CP. Rather, it simply showed that the damage to the teeth was not artefactual, but the result of decomposition.

152. Mr Whittam further submitted that:

(1) It was not the prosecution case at trial, whether in opening or closing, that the ice-axe (which was introduced into the evidence by the defence, and only thereafter exhibited) was the murder weapon, or a weapon used to disfigure the face of the deceased so as to avoid recognition. Nor did the prosecution ask Dr Tapp to deal with it in evidence. The ice-axe which MW asserted that the appellant had described to him was very different.
(2) Dr Tapp's opinion that "*the teeth had the appearance of 'shaving off' in a downward motion…This also indicates the weapon had an edge*" had been given an inflated significance in the post-conviction reports. He had mentioned it only in a handwritten addition to his statement for the Inquest. It did not appear in his later witness statement; he did not appear to have given that evidence at trial; and it did not feature in the summing up – in which the only references to the ice axe were in connection with it being produced to Mr Shaw in cross-examination, its use to

support, the fact of it being found being used by the prosecution to support MW, and (in the same regard) when summarising the prosecution closing speech.

(3) It was simply wrong to suggest, as the CCRC had in the Reference, that there was a persistent suggestion that the ice-axe was a good candidate for, or may have been, the murder weapon.

(4) In any event, it was important to note that Dr Kolar did not state that the ice-axe was not used to cause facial injuries to CP. Rather, it was important to bear in mind that there was a distinction between damage to the teeth and shaving off (which was not in evidence before the jury) and damage to the face (which was); and that Dr Kolar had not altered his opinion that the use of a part sharp edge could neither be confirmed nor refuted.

(5) The condition of the left zygoma (as seen by Dr Tapp during his post mortem examination) and the reconstruction both supported the use of an instrument with a sharp edge.

153. In reply, Mr Blaxland submitted that this Ground was really part of the consideration of Dr Tapp's opinion, and continued that:

(1) Dr Fegan-Earl's report had been made prior to the odontological developments, and there had been no formal response by him since those developments.

(2) As Dr Kolar had made clear, the only evidence in relation to the condition of the left zygoma came from Dr Tapp.

(3) Whilst it was nevertheless accepted that the wooden ice-axe could not be excluded as a cause of the bony injuries, it was now excluded as being the cause of the damage to the teeth.

(4) Dr Tapp had thus been wrong about the cause of the damage to the teeth which, if known at the time, would have caused some doubt as to his evidence overall.

(5) Whilst there was no satisfactory explanation for the failure, by both sides, to instruct an odontologist at trial, it was nevertheless in the interests of justice for the court to receive the evidence of the three experts – whose evidence had come about via the respondent's instruction of Dr Fegan-Earl.

Ground 4 – The expert evidence of Dr Moncrieff in relation to the rock

154. Mr Blaxland submitted that:

(1) The evidence at trial of Dr Pirrie (for the prosecution) and Professor Pye (for the defence), which spanned 4 days, was highly detailed and technical and formed the most substantial single topic in the summing up.

(2) Although much of the evidence was highly technical, the prosecution case rested on a simple proposition – namely that the rock had been recovered from the bed of Coniston Water in the vicinity of women's clothing and cosmetics dating from the early 1970s; that it had a particular characteristic (referred to as a textural association) which it shared with three rocks recovered from a wall at 'Bluestones'; and that the characteristic was not present in the total of five rocks recovered from the shore of Coniston Water in the vicinity of where CP's body had been found.

(3) The presence or absence of the characteristic in the relevant rocks was not disputed. It was Dr Pirrie's opinion that the characteristic was a distinctive and rare feature which he had not seen before, and neither had Professor Pye.

(4) The defence challenge, based on Professor Pye's evidence, was that the sections of the 5 lakeside rocks that had been analysed were too small a sample to exclude the possibility that the same characteristic was present in those rocks, and that, in the absence of further research, it was not possible to tell if the same characteristic was not present in other rocks in the Coniston Water area and beyond – given that it was Professor Pye's view that all of the recovered rocks were derived from the "Windermere Supergroup".

(5) Dr Pirrie's response was that he felt that he had representative samples from both the 'Bluestones' wall and the lakeside, and that it was strange that the same characteristic was found in the rock and the 'Bluestones' sample, but not in the lakeside samples.

(6) In his closing speech, Mr Webster had made much of Dr Pirrie's evidence.

(7) Dr Moncrieff's later report, made after he had collected and analysed further samples, had effectively destroyed the prosecution's case in relation to the rock. He had concluded that:

> "*The recent analysis of these samples now shows that the composition of* [the rock] *as well as being similar to samples from ''Bluestones'' is also indistinguishable not only from samples collected from the wider Leece area around 'Bluestones', but also from rocks adjacent to the Cabin where the body was brought ashore and possibly from where it was taken for disposal in the lake. The conclusion that the composition of* [the rock] *was sufficiently unusual to allow a link to be inferred to 'Bluestones' is therefore unfounded.*"

(8) In 2008, the Court of Appeal had received Dr Moncrieff's evidence (and had proceeded on the basis that Dr Pirrie had accepted that evidence), but had dismissed the appeal upon the basis that it was not reasonably arguable that the evidence raised a doubt as to the safety of the conviction, given that:

  (i) There was doubt as to how the rock had come to be found.

  (ii) Dr Pirrie had accepted at trial that no studies had been carried out concerning the incidence of the characteristic in the Lake District, and thus the evidence was far from clear cut, and thus the jury may well have had difficulty in knowing what conclusions to draw from it.

  (iii) The court considered that there was a strong circumstantial case against the appellant.

155. Against that background, Mr Blaxland submitted that:

(1) The Court's conclusions about the significance of the evidence had understated its potential impact at trial – the prosecution had placed considerable reliance on it; the question of whether the rock had been associated with the recovered clothes turned on Dr Pirrie's evidence of association with 'Bluestones'; and, on the face of it, the prosecution's case that it was a very significant finding was very powerful.

(2) In the result, the impact of the evidence on the jury was incalculable, and it was impossible to discount the reasonable possibility that it played a significant part in their consideration of their verdict – not least as it was the only piece of scientific evidence to link the appellant to the crime.

(3) As illustrated in his general submissions, the prosecution's circumstantial case had a number of problems and could not, on its own, provide a sufficient basis for upholding the safety of the conviction – it was not an overwhelming case.

(4) Therefore, in assessing the overall safety of the conviction now, it was essential for the Court to consider the significance of the destruction of the prosecution's case in relation to the finding of the rock.

156. In response, Mr Whittam submitted that in 2008 the Court had correctly:

(1) Rejected any suggestion that the evidence in relation to the rock was crucial to the prosecution's case at trial.
(2) Concluded that the evidence in relation to the rock was only one element in a strong circumstantial case; that the evidence at trial must have left doubts as to whether the rock could not have come from the Coniston area; that thus Dr Moncrieff's evidence did not afford a ground for allowing the appeal; and that therefore it was not: "*Realistically arguable that the evidence of Dr Moncrieff raised a reasonable doubt as to the safety of the Appellant's conviction"*.

157. Mr Whittam further submitted that the evidence of Dr Moncrieff did not have renewed importance and that reconsideration of it was not appropriate, nothing had changed since 2008. The rock was not a crucial part of the prosecution's case at trial, it was only a single part of a strong circumstantial case. The case remained strong and none of the individual strands had been weakened. Accordingly, as in 2008, Dr Moncrieff's evidence did not afford any basis for allowing the appeal - whether considered alone or in combination with the other three Grounds now advanced.

158. Mr Blaxland replied that the evidence at trial in relation to the rock had not been just another piece of evidence - rather, it had been a very powerful piece of prosecution evidence.

Legal Framework – The arguments

159. Section 2 of the Criminal Appeal Act 1968 (as amended) provides that, subject to the provisions of the Act, the Court of Appeal:

"(a) shall allow an appeal against conviction if they think that the conviction is unsafe; and
(b) shall dismiss such an appeal in any other case…"

160. Mr Blaxland submitted that the leading case in relation to the approach to the safety of a conviction in a fresh evidence appeal (such as this one) is the decision of the House of Lords in *R v Pendleton* [2002] 1 Cr.App.R. 34, in which, at [20], Lord Bingham (who gave the leading speech) identified the following guiding principles:

(1) The Court of Appeal is not, and should never become, the primary decision maker.
(2) The question for the Court is whether the conviction is safe, not whether the accused is guilty.
(3) In a case of any difficulty, it will be wise for the Court to test its provisional view by asking whether the fresh evidence might reasonably have affected the decision of the trial jury to convict.
(4) If the fresh evidence might reasonably have affected the decision of the jury then the conviction must be thought to be unsafe.

161. As to the meaning of "a case of any difficulty", Mr Blaxland relied on Lord Bingham's speech at [18], as follows:

> "*Where the Court of Appeal has heard oral evidence under section 23(1)(c) (whether pursuant to its own decision, or by agreement, or de bene esse), the evidence will almost always have appeared, on paper, to be capable of belief and to afford a possible ground for allowing the appeal. By the time the Court comes to decide whether the appeal should be allowed or dismissed, it will have heard the evidence, including cross-examination, and any submissions made on its effect. It may then conclude, without doubt, that the evidence cannot be accepted, or cannot afford a ground for allowing the appeal. Such was the case, for example, in R v Jones (Steven) [1997] 1 Cr.App.R. 86, where the Court, having decided to receive and having heard opinion evidence from an expert, found conclusive objections to the acceptability of that opinion (see p.94). The Court may, on the other hand, judge the fresh evidence to be clearly conclusive in favour of allowing the appeal. Such might be the case, for example, if a witness who could not be in any way impeached testified, on oath and after all appropriate warnings, that he alone had committed the crime for which the appellant had been convicted. The more difficult cases are of course those which fall between the extreme ends of the spectrum".*

162. This appeal, Mr Blaxland submitted, clearly falls between the extreme ends of the spectrum, and is thus one in which the jury impact test must be applied – which test embodies the role of this Court as a court of review.

163. Mr Blaxland further argued, by convenient reference to an article entitled "Sappers and underminers: fresh evidence revisited" (written by him and published in the Criminal Law Review - see [2017] Crim.L.R. 537) that in *R v Pendleton* the House of Lords had failed to directly grapple with the central issue in relation to its earlier decision in *Stafford v DPP* [1974] AC 878 (which was whether the new statutory test on appeal first introduced by the Criminal Appeal Act 1966 had fundamentally revised the role of the court – the consideration of which should have resulted in *Stafford v DPP* being overturned). Mr Blaxland continued that the authorities since *R v Pendleton*, such as *H* [2002] EWCA Crim 730, *Dial and another v Trinidad and Tobago* [2005] UKPC 4, *Burridge* [2010] EWCA Crim 2847, *Mushtaq Ahmed* [2010] EWCA Crim 2899, and *Garland* [2016] EWCA Crim 1743 (in which the authority of *Stafford v DPP* was re-stablished, and it was decided that the jury impact test is not determinative in a fresh evidence appeal as it cannot supplant the Court's own responsibility for determining the safety of the conviction) were based on the same fundamental misconception of the significance of the statutory test.

164. In the combination of the respondent's written and oral arguments, Mr Whittam submitted that the jury impact test was not the correct ultimate question. Rather, he argued, the ultimate question for the Court is whether the undisclosed material and/or fresh evidence causes us to doubt the safety of the conviction.

165. In support of that submission Mr Whittam relied on [24] of the judgment of the Court in *Mushtaq Ahmed* (above), in which Hughes LJ (then the Vice President of the Court of Appeal Criminal Division) said:

"*Although it is not critical to the outcome of this appeal, we do not in any event agree with Mr Ali's submission that it is sufficient to render a conviction unsafe that there now exists material which the jury did not have and which might have affected their decision. The responsibility for deciding whether fresh material renders a conviction unsafe is laid inescapably on this court, which must make up its own mind. Of course, it must consider the nature of the issue before the jury and such information as it can gather as to the reasoning process through which the jury will have been passing. It is likely to ask itself by way of a check what impact the fresh evidence might have had on the jury. But in most cases of arguably fresh evidence it will be impossible to be 100% sure that it might not possibly have had some impact on the jury's deliberations since ex hypothesi the jury has not seen the fresh material. The question that matters is whether the fresh material causes the court to doubt the safety of the verdict of guilty. We have had the advantage of seeing the analysis of Pendleton [2001] UKHL 66; [2002] 1 Cr.App.R. 34 and Dial [2005] UKPC 4; [2005] 1 W.L.R. made recently by this court in Burridge [2010] EWCA Crim 2847 (see paragraphs 99-101) and we entirely agree with it. Where fresh evidence is under consideration the primary question "is for the court itself and is not what effect the fresh evidence would have had on the mind of the jury". (Dial). Both in Stafford v DPP [1974] AC 878 at 906 and in Pendleton the House of Lords rejected the proposition that the jury impact test was determinative, explaining that it was only a mechanism in a difficulty case for the Court of Appeal to "test its view" as to the safety of the conviction. Lord Bingham, who gave the leading speech in Pendleton, was a party to Dial".*

166. Mr Whittam also relied on [25] – [31] of the judgment of this Court, given by Lord Judge CJ, in *Noye* [2011] EWCA Crim 650:

"*25. The approach of this court to appeals brought on the basis of fresh evidence admitted under s.23 of the Criminal Appeal Act 1968, as amended by the Criminal Appeal act 1995, should now be regarded as settled. It was decided by the House of Lords in Stafford v DPP [1974] AC 878 that the ultimate responsibility for deciding whether a conviction was safe rested with the court. The principle was re-affirmed in the house of Lords in R v Pendleton [2002] 1 WLR 72 in a short phrase in the speech of Lord Bingham of Cornhill that "…the principle laid down in Stafford was, in the opinion of the House, correct…"*

26. For a while it was thought that Pendleton was authority for a different approach, and there was a great deal of emphasis on the observations by Lord Bingham that the Court of Appeal should remind itself that it has

> *"an imperfect and incomplete understanding of the full process which led the jury to convict. The Court of Appeal can make an assessment of the fresh evidence that it has heard, but save in a clear case is at a disadvantage in seeking to relate that evidence to the rest of the evidence that the jury has heard. For these reasons it will usually be wise for the Court of Appeal, in a case of any difficulty, to test their provisional view by asking whether the evidence, if given at trial, might reasonably have affected the decision of the trial jury to convict. If it might, the conviction must be thought to be unsafe".*

27. Any doubts on the issue were resolved by the decision of the Privy Council in Dial and another v State of Trinidad and Tobago [2005] 1 WLR 1660 where Lord Brown of Eaton-under-Heywood gave a judgment expressing the view of the Board that:

> *The law is now clearly established and can be simply stated as follows. Where fresh evidence is adduced on a criminal appeal it is for the Court of Appeal, always assuming that it accepts it, to evaluate its importance in the context of the remainder of the evidence in the case…The primary question is for the court itself and is not what effect the fresh evidence would have had on the mind of the jury."*
>
> *28. It is relevant to underline, first, that Lord Bingham of Cornhill was himself a member of the constitution, and party to the majority judgment given by Lord Brown; that Lord Brown was expressing the view of the Board as a whole; and that although Lord Steyn and Lord Hutton disagreed with the conclusion that the conviction under consideration was safe, neither suggested that the essential principle was in doubt; indeed Lord Hutton expressly repeated it.*
>
> *29. This approach has been consistently followed in this court (see for example R v Hakala [2002] EWCA Crim 730; R v Hanratty, deceased [2002] 3 All ER 534; R v Ishtiaq Ahmed [2002] EWCA Crim 2781; R v Harris [2006] 1 Cr App R 5; R v Dunne and others [2009] EWCA Crim 1371; R v Burridge [2010] EWCA Crim 2874, where the authorities to date are carefully analysed at paragraphs 99-101).*
>
> *30. The same principle applies to whatever form of fresh evidence is admitted under section 23 of the 1968 Act, whether it appears to strengthen or weaken the case for the appellant or weakens or strengthens the Crown's contention that the conviction is safe.*
>
> *31. The responsibility therefore rests with this court. In reaching our decision we reflect on how best to examine the fresh evidence and its possible impact on the safety of the conviction, and test our analysis to ensure that we have reached the right conclusion. Miss Montgomery reminded us that we were not making an assessment based on the advantages of seeing and hearing the witnesses; equally, we do not know which parts of the evidence impressed the jury, and which did not. All this is clear enough, and we recognise the difficulties which can face this court when it is assessing the impact of fresh evidence on the safety of a conviction…….the essential question which we must address…is, whether, in the light of the fresh evidence, the conviction is unsafe. The principle is clear."*

167. Finally, on this issue, Mr Whittam drew our attention to the decision in *R v Garland* [2016] EWCA Crim 1743, in which this Court. presided over by Lloyd Jones LJ (as he then was), considered how the principles identified by the Supreme Court in *McInnes v Her Majesty's Advocate* [2010] UKSC 7, in relation to prosecution non-disclosure in Scotland, were to be reconciled with authorities such as *Pendleton*, *Burridge* (at [99]-[101]) and *Mushtaq Ahmed* (at [24]). In *McInnes*, Lord Hope had identified two questions that fell to be considered in cases of non-disclosure – first, whether the material under consideration should have been disclosed and second, whether, taking all the circumstances of the trial into account, there was a real possibility that the jury would have arrived at a different verdict. At [46]-[55] of the judgment in *Garland* this Court analysed the relevant authorities in both Scotland and England & Wales, concluded that there was no difference between them, but that (in any event) it had to apply the law of England & Wales which, it concluded, was that:

> "*…the ultimate question for our consideration……is whether the material causes us to doubt the safety of the conviction*."

The merits

Initial observations

168. It is clear from the transcript that the summing up was a model of its type – comprehensive, chronological, detailed when necessary, easy to follow and scrupulously fair.

169. In combination with the other contemporaneous materials with which we have been provided (set out in paras 30 & 31 above) it has provided the Court with a clear picture of the issues and evidence at trial.

170. It must be remembered that in 2008 (see paras 85 – 89 above) this Court was dealing with the appellant's then renewed application for leave to appeal and thus, in accordance with established practice, gave outline, rather than comprehensive, reasons for its conclusions. In any event, the judgment made clear that the aspects of the circumstantial evidence which the Court cited were examples, not a comprehensive list.

171. The new DNA evidence in relation to the rope used to bind CP's body was clearly a significant part of the CCRC's reasons (see paras 90 & 91 above) for referring the case, as it was regarded as being capable of relating directly to the identity of the murderer, and was also said to undermine two of the aspects of the prosecution's circumstantial case. Thus, the appellant's concession (see para 93 above) that it does not support, even arguably, the proposition that it undermines the safety of the conviction (whether by implicating another or by exculpating the appellant – or, we would add, by undermining any aspect of the circumstantial evidence) means that the scope of the appeal is significantly different to that envisaged at the time of the Reference.

172. We have considered the fresh evidence on both sides *de bene esse.*

Legal framework

173. We have summarised the arguments and the authorities cited by the parties in relation to the legal framework at paras 159 – 167 above.

174. Mr Blaxland's core submission involved an attack on the central reasoning of the decision of the House of Lords in *Stafford v DPP*, which the Respondent argued was subsequently upheld by the House of Lords in *R v Pendleton,* and was followed by the Privy Council in *Dial and another v Trinidad and Tobago* and in many cases in this Court – including *Burridge*, *Mushtaq Ahmed* and *Noye.*

175. In [25] – [31] of the judgment in *Noye* (which we have quoted in full above) Lord Judge CJ indicated that:

    (1) The approach of this Court to appeals brought on the basis of fresh evidence should now be regarded as settled.
    (2) It was decided by the House of Lords in *Stafford v DPP* that the ultimate responsibility for deciding whether a conviction was safe rested with the court.
    (3) The principle was re-affirmed by the House of Lords in *R v Pendleton.*

(4) Whilst, for a while, it was thought that *Pendleton* was authority for a different approach, any doubts on the issue were resolved by the decision of the Privy Council in *Dial and another v Trinidad and Tobago* – namely that the law was clearly established and was that if fresh evidence is accepted it is for the Court of Appeal to evaluate its importance in the context of the remainder of the evidence in the case, and that thus the primary question of whether the conviction is safe is for the court itself. The primary question is not what effect the fresh evidence would have had on the mind of the jury.
(5) That approach had been consistently followed in the Court of Appeal and applied - whatever form of fresh evidence was admitted.
(6) The responsibility therefore rests with this Court, and the essential question which it has to address is whether, in the light of the fresh evidence, the conviction is unsafe.

176. In *R v Garland*, at [46] – [55] this Court analysed the authorities in relation to the approach to fresh evidence, and concluded that:

(1) The same approach applies in non-disclosure cases.
(2) The law of England and Wales is that the ultimate question for the Court's consideration is whether the relevant material causes it to doubt the safety of the conviction.

177. We see no merit in Mr Blaxland's central argument that *Stafford v DPP* and the subsequent authorities to which we have referred are based upon a fundamental misconception of the statutory test. In any event, the authorities to which we have referred are binding on us.

178. In the result, we have concluded that the law in relation to the Court's approach to non-disclosure appeals and fresh evidence appeals is the same and is both settled and clear. The ultimate question is not (as argued by Mr Blaxland) the jury impact test – which is simply a way in which the court can test its view as to the safety of the conviction in a difficult case. Rather, the ultimate question is whether the non-disclosure and/or fresh evidence relied on in this appeal causes us to doubt the safety of the conviction.

Ground 1 – Non-disclosure of MW's use and supply of drugs

179. In paras 39-42, 46, 48, 49, 52, 77, 78 & 84 above, we have summarised the circumstances in which MW came forward as a witness, his witness statements and evidence at trial, and what was said about him in the closing speeches and summing up.

180. We have summarised the arguments in relation to this Ground in paras 104-118 above.

181. The non-disclosure of the information, recorded in June 2004, that MW was coming off heroin is conceded by the respondent. We agree that it should have been disclosed – whether (as conceded) because of its impact on MW's 16 July 2004 witness statement or, at the latest, as rightly contended by the appellant, once MW had given evidence that he had stopped taking hard drugs in 1997. However, we agree with the respondent that there is no evidence that the information was deliberately withheld.

182. Equally, there is no evidence that the prosecution were made aware of either MW's arrest on 19 January 2005 (nine days before the end of the trial) or of his plea and sentence on 22 February 2005 (over 3 weeks after the end of the trial). Nor that that non-disclosure was the product of any lack of due diligence by the police officers involved in this case. Thus, there was no breach of the prosecution's duty of disclosure.

183. However, Mr Webster accepted, when apprised of MW's arrest by the CCRC, that, if he had known about it at the time, he would have disclosed that information.

184. In any event, given that both the arrest and the plea and sentence of MW related to offences the time-span of which included his witness statements in 2004 and the trial, and that we disagree with the respondent's submission that the information would not have enabled the appellant to explore whether MW's drug supplying activities had been funding his heroin use, and/or whether he was under the influence of drugs when making his 2004 statements and/or when giving evidence, we think it right to include consideration *de bene esse* of the evidence in relation to MW's arrest, charge, plea and sentence as fresh evidence in relation to this Ground.

185. We agree with the respondent that the outcome has to be judged in the light of the numerous difficulties in MW's evidence (set out in para 112 above); of his cross-examination by Mr Edis (as summarised in paras 42 and 113 above); and of the CCRC 's view (see para 114 above) that the Mr Edis had "*conducted a robust cross-examination of (MW) by reference to his drug abuse, his failure to come forward before the television programme which had included most of the details that he had recounted, and all the changes, inconsistencies and inherent difficulties in his various accounts*." In judging these matters, and importantly, we also have the benefit of the transcript of MW's evidence.

186. As indicated in paras 46 and 52 above, in his closing speech Mr Webster made clear that if MW's had been the only evidence, he would not have invited a conviction on it. He also acknowledged that some aspects of MW's evidence were inconsistent with other evidence, that there was no doubt that MW had some bizarre beliefs, and that he was a man with previous convictions – which were all powerful reasons to treat his evidence with real and extreme caution. The only elements that Mr Webster was able to rely upon as possibly supporting MW were common sense in relation to other inmates getting at the appellant; the fact that the appellant was a primary school teacher; the fact that it was not suggested that an ice-axe had been mentioned in the media or in the television documentary; and that it was an extraordinary coincidence that it happened that the appellant was a climber and had an ice-axe. We examine the last point in detail below in relation to Grounds 2 & 3, but observe at this stage that the appellant had an answer to it at trial (see para 75 above) namely that, whilst in HMP Preston, he had spoken about being a climber.

187. It is also telling, in our view, that in his closing speech Mr Edis asserted (see para 48 above) that MW had effectively been dumped by the prosecution. No experienced criminal advocate would have made that point unless, from the manner in which the prosecution had dealt with MW's evidence in closing, it was self-evidently correct.

188. In summing up (see para 49 above) McCombe J warned the jury of the need for extreme caution in relation to MW's evidence, and detailed both what he had said and many of the problems with it.

189. Having considered all these matters, and the fact that the prosecution case was always principally based on a mass of circumstantial evidence, we have concluded that MW's consistency, credibility and reliability were all destroyed at trial (even without the appellant having the material now relied upon) and to such an extent that it is (to say the least) highly unlikely that, in convicting the appellant, the jury relied on MW's evidence at all.

190. Thus, although there is, in our view, some force in the appellant's assertion that cross-examination of MW about the fact that he had said that he was coming off heroin, and that he was committing Class B and C drug offences in the period between January 2014 and January 2015, could have gone beyond being "*more of the same*" that does not render the appellant's conviction unsafe.

191. In any event, even if the jury did rely, to some extent, on MW's evidence and even if deployment in cross-examination of the note and/or the offending might have undermined his evidence even more, the circumstantial case against the appellant (which we deal with below when considering the cumulative effect of the Grounds) was, in our view, very strong such that, on this Ground alone, the non-disclosure of the note and the new evidence as to the commission of the drug offences do not cause us to doubt the safety of the conviction. We examine this again below, in the context of the cumulative effect of the Grounds and the overall safety of the conviction, at which stage we will summarise the reasons for our conclusion as to the strength of the prosecution's circumstantial case.

Ground 2 – Non-disclosure of Dr Tapp's opinion in relation to the wooden ice-axe

192. This Ground is interlinked with Ground 3, in that both are based on the premise that the prosecution case included the persistent suggestion or impression that the appellant's wooden ice-axe was a good candidate for, or may have been, the murder weapon, which was not a peripheral issue. Nevertheless, we propose to deal with the two Grounds in turn.

193. The evidence and arguments relied on in relation to this Ground are summarised in paras 119-143 above. The agreed Schedule and Transcript, appended hereto, detail the relevant aspects of what Dr Tapp has been recorded as saying (in the period between October 1997 and May 2018) about the type of weapon used to inflict the facial injuries.

194. The respondent conceded that the CPS note dated 2 June 2004, recording that Dr Tapp had examined the wooden ice-axe, and had said that "*he did not think that it was the murder weapon although he believes that the weapon used was an axe*", should have been disclosed, along with the notes of the conferences on 22 June 2004 and 7 September 2004 - given that Dr Tapp was an expert witness.

195. The respondent also conceded that a further witness statement should have been taken from Dr Tapp encompassing the opinions expressed by him about the murder weapon in the period from May to September 2004.

196. Mr Blaxland accepted that the prosecution had never stated in terms that it was their case that the wooden ice-axe was, or could have been, the murder weapon. However, he asserted that that was the impression that the prosecution had left the jury with.

197. In that regard, Mr Blaxland relied (see paras 123-126 & 130 above) upon:

(1) The prosecution Opening at trial.
(2) MW's evidence that the appellant had told him that that he had used an axe, which MW had understood to be an ice-axe with a black handle and a metal shaft.
(3) The fact that Paul Shaw was shown the ice-axe in cross-examination and said that he could not countenance the appellant having used that sort of object to kill anyone.
(4) Dr Tapp's evidence that a heavy object with an edge to it, such as an axe, had been used.
(5) The prosecution closing speech, during the course of which Mr Webster had suggested to the jury, in relation to MW's evidence, that it was an extraordinary coincidence that the appellant was a climber and owned an ice-axe (albeit a wooden one rather than one with a black handle and a steel shaft).
(6) Mr Webster's recollection that the wooden ice-axe was part of the circumstantial case; that it was also part of the prosecution case that it was a good candidate for the murder weapon; and the fact that the appellant had such an axe provided some evidential weight.
(7) Mr Edis's recollection that the prosecution had presented the wooden ice-axe as an implement that could be the murder weapon; that it had been shown to the jury as a possible murder weapon; his belief that the prosecution had said that it was Dr Tapp's view that it was consistent with being the murder weapon; and that if he had known that Dr Tapp's view was that it was unlikely that the wooden ice-axe was the murder weapon he would have cross-examined him about it.
(8) The fact that it would be surprising if trial counsel on both sides were wrong about their sense that that the jury had been left with the clear impression as to the candidacy of the wooden ice-axe as the murder weapon.
(9) The significance of the wooden ice-axe had been appositely identified by this Court in 2008 in the following passage at [4] of the judgment:
"*…with the teeth having been struck with a blunt instrument, possibly an ice pick. An ice-axe was one of the items found at the applicant's home. At trial it was formally admitted that Mrs Park's facial injuries had probably been caused by an axe.*"

198. In response (paras 131-143 above) Mr Whittam submitted that:

(1) There was nothing to suggest that the content of the notes had been deliberately withheld from the defence in bad faith.
(2) The content of the notes did not undermine the way in which the case was put by the prosecution at trial.

(3) Notably, there was no reference in the prosecution's opening or closing notes, or in the summing up, that suggested, and/or left open the possibility, that the appellant's ice-axe could be the murder weapon.
(4) Rather, the CPS note of Dr Tapp's evidence recorded him as saying (in answer to the prosecution) that the instrument used to inflict blunt force trauma to CP was "*a heavy object with edge to it…an instrument with a sharp edge….an axe is the sort of instrument causing this injury"*; and in summing up McCombe J said that Dr Tapp's evidence was that: "*the blows would have required a heavy instrument, probably with a sharp edge, and in his* (Dr Tapp's) *view it was an axe that usually causes injury of this type."*
(5) The wooden ice-axe was listed on a schedule of unused material dated 27 October 2004.
(6) It was very different from the ice-axe which MW alleged that the appellant had described to him – which said to have a black handle and a metal shaft.
(7) Shortly before trial, in November 2004, the appellant's solicitors had requested that the wooden ice-axe be released for examination by the defence facial reconstruction expert, Dr Evison, and had signed an undertaking regarding its safe conduct. However, no expert report from Dr Evison was ever served.
(8) The wooden ice-axe only became an exhibit when it was shown to the witness Mr Shaw during the course of his cross-examination by Mr Edis.
(9) Mr Webster was present at the conferences on 22 June 2004 and 7 September 2004 and never showed Dr Tapp the ice-axe in evidence and never elicited from him, nor suggested to him, that CP's injuries could have been caused by it.
(10) Rather, the prosecution made clear that the only relevance of the wooden ice-axe (which had been recovered from the appellant's then home in 2004) was that it supported MW's contention that he had had a conversation with the appellant, which the appellant denied.
(11) The prosecution point was that, given that the appellant denied that he had ever met and spoken with MW, it was a striking coincidence that the conversation that MW said that he had had with the appellant included reference by the appellant to an ice-axe with a black handle and a metal shaft, and an ice-axe (albeit a wooden one) had been found at the home of the appellant, who was a climber.

199. In the alternative, Mr Whittam submitted that the ultimate opinion of all four pathologists involved in the appeal (Dr Tapp and Dr Fegan-Earl for the respondent and Dr Lawlor and Dr Kolar fir the appellant) was that the wooden ice-axe could not be excluded as a potential candidate for being the murder weapon.

200. We agree with the respondent that there is nothing to suggest that the content of the notes was deliberately withheld in an act of bad faith.

201. In our view, the premise of this Ground is misconceived in that, for the reasons set out by the respondent in argument (above), the suggestion or impression claimed by the appellant was never given by the prosecution, and nor was it ever likely to have been inferred by the jury. The true position is clear from the contemporaneous records. The recollections of Mr Webster and Mr Edis are, unsurprisingly given the length of time since the trial, in error in this respect (and, between them, other respects), and this Court was in error in 2008 in stating (albeit in relation to part of the narrative that was irrelevant to the outcome of the then application) that CP's teeth had possibly been struck by an ice

pick, and that it was admitted that CP's facial injuries had probably been caused by an axe.

202. The wooden-ice-axe was part of the unused material. The sole point made by the prosecution in relation to it was the coincidence, if as the appellant claimed he had never met MW at all, let alone confessed to him, that the appellant should turn out to be a climber and to own an ice-axe, albeit plainly not the one that he told MW he had killed CP with. A suggestion that the wooden ice-axe was the murder weapon would have had the potential to undermine MW's evidence that the appellant had told him that he had used a different ice-axe, and had disposed of it. In addition, in a case in which the prosecution relied on the careful and methodical nature of the murderer's conduct, it would have been potentially inconsistent to suggest that he had not disposed of the murder weapon.

203. It was the defence who produced the wooden-ice axe to Mr Shaw in cross-examination and asked him about the use of that type of weapon, in consequence of which it became Exhibit 1 in the trial. Neither side invited Dr Tapp to consider it in evidence, it would not have been relevant to do so. In any event, it is clear that:
    (1) Dr Lawlor, the defence pathologist, had advised that the wooden ice-axe could not be excluded from being the murder weapon.
    (2) Dr Tapp's view has always been that it could not be excluded from being the murder weapon.
    (3) That view is shared by both the other pathologists involved in the appeal.

204. Thus, in our view, the pre-trial non-disclosure of Dr Tapp's opinion that he did not think that the wooden ice-axe was the murder weapon and the failure to take a witness statement from him encompassing the opinions that he had expressed in the period from May to September 2004 do not impact on the safety of the appellant's conviction.

205. Two further failures to disclose were relied on by Mr Blaxland during the course of the argument in relation to this Ground, namely:
    (1) Non-disclosure, after the trial, of the note dated 2 June 2004 that recorded that Dr Tapp had opined that he did not think that the wooden ice-axe was the murder weapon (see para 127 above).
    (2) Non-disclosure of a record that the police had searched in the vicinity of boathouses, in which record it was stated that:
    "*An outstanding weapon for the murder of Mrs Park, Coniston, over 21 years ago is a small axe, possibly a small kindling axe. This is believed to have been buried between a boat house and the lake."* (see para 129 above).

206. The first failure is said to have been significant because it happened against the background of the impression that the prosecution had left the jury with that the wooden ice-axe could have been the murder weapon. However, for the reasons that we have explained above in relation to the pre-trial non-disclosure of the same note (and the failure to take a witness statement from Dr Tapp,) no such impression was given, or was ever likely to have been inferred by the jury. Therefore, in our view, the first failure does not impact on the safety of the conviction.

207. The second failure is said to be significant because the search for a small axe (and not an ice-axe) could only have been because the police understood that Dr Tapp had excluded an ice-axe, and thus the record should have been disclosed because it demonstrated that the prosecution did not believe that an ice-axe had been used to cause the facial injuries to the deceased. However, it is clear that it has always been Dr Tapp's view that the wooden ice-axe cannot be excluded as being the murder weapon, and he is supported in that view by the other three pathologists involved in the appeal. The assertion that the police must have understood that Dr Tapp had excluded an ice-axe is speculative. In any event, and as we have indicated above, it was never suggested by the prosecution that the wooden ice-axe was the murder weapon, and no such impression was ever given, or was ever likely to have been inferred. Thus, in our view, the second failure does not impact on the safety of the conviction either.

Ground 3 – New expert evidence in relation to the wooden ice-axe

208. We have summarised the evidence and arguments in relation to this Ground at paras 144-153 above. As indicated above, this Ground is interlinked with Ground 2 - in that both are based on the premise that the prosecution case included the persistent suggestion or impression that the appellant's wooden ice-axe was a good candidate for, or may have been, the murder weapon, which was not a peripheral issue.

209. The first issue is whether the appellant requires leave under s.14(4B) of the Criminal of the Criminal Appeal Act 1995 (as amended) to pursue this Ground or is entitled to do so under s.14(4A) because it is related to the second reason given by the CCRC for making the reference (i.e. Dr Tapp's undisclosed opinion that he did not think that the wooden ice-axe was the murder weapon). In our view, leave is not required as this Ground is related to the CCRC's second reason because, under it, the appellant seeks to go beyond Dr Tapp's undisclosed opinion and his opinion that the wooden-ice-axe could nevertheless have been used to cause CP's facial injuries, and to demonstrate as a fact, via new expert evidence, that the wooden ice-axe could not have caused CP's facial injuries.

210. However, for the reasons that we have explained when dealing (above) with the merits of Ground 2, the premise upon which both Grounds are based is misconceived.

211. During the investigation and trial neither side sought expert odontological assistance as to the causation of the damage to CP's teeth, which Dr Tapp thought could have been caused by the sharp edge of a weapon. There is now (subject to Dr Evans' small reservation) agreed expert odontological evidence that the damage to the teeth was the result of decomposition rather than artefactual.

212. However, in relation to the bony facial injuries, and subject to the fact that Dr Fegan-Earl did not formally respond to the opinion of the odonatological experts, it remains the view of all the pathologists that the wooden ice-axe could have been used to inflict the bony facial injuries, or that its use cannot be refuted. Thus, in our view, Dr Tapp's opinion in relation to the potential cause of the facial injuries is not undermined by his error in relation to the cause of the damage to the teeth, nor does it cause doubt as to his observation as to the condition of the left zygoma.

213. In any event, as Mr Whittam pointed out in argument, Dr Tapp had only mentioned the damage to the teeth as being an indication that the weapon had a sharp edge in a handwritten addition to his statement for the Inquest; it did not appear in his later witness statement; it appears that he did not give that evidence at trial and it did not feature in the summing up.

214. For all those reasons, in our view this Ground, taken alone, does not impact on the safety of the conviction.

Ground 4 – The expert evidence of Dr Moncrieff in relation to the rock

215. The evidence and arguments in relation to this Ground are summarised in paras 154-158 above.

216. As illustrated in para 83 above, Dr Pirrie's contested expert geological evidence in relation to the rock was one of a large number of matters relied on by the prosecution as part of its circumstantial case against the appellant. It was, however, one of only two such matters that were based on scientific evidence which had the potential to link the appellant to the murder. The other was based on the contested opinion of Mr Ridyeard that the appellant's claw hammer could have been used to flatten the lead piping used to weigh down CP's body.

217. Mr Blaxland underlined that Dr Pirrie's conclusion was that the rock had a particular characteristic which it shared with three rocks from a wall at 'Bluestones' which characteristic was not present in five rocks recovered from the shore of Coniston Water, which allowed a link to be inferred to 'Bluestones', and that, on the face of it, the prosecution's case that that was a very significant finding was very powerful. In 2008, he submitted, this Court had understated its potential impact at trial. Equally, Mr Blaxland argued, the remainder of the prosecution's case had a number of problems and could not, on its own, provide a sufficient basis for upholding the conviction.

218. There is no doubt, based on the evidence of Dr Moncrieff's and the acceptance of that evidence by Dr Pirrie, and by this Court, in 2008, that Dr Pirrie's evidence at trial in relation to his conclusion was wrong, and that thus there was no merit in this aspect of the prosecution's circumstantial case.

219. That said, in our view, it was clear at trial that there were problems in relation to the evidence about the rock. For example:

    (1) It was the only exhibit that was specifically excluded from the admission that the exhibits in the case had been properly seized, transmitted, stored and produced, and there was some confusion in the evidence as to where it had been found – not least because PC Brookes' evidence was that he was not aware of having found it.
    (2) In dealing with the geological evidence in the summing up the judge underlined that Dr Pirrie had only been a forensic scientist for 18 months, and that the trial was the first time that he had ever given evidence, saying:
    "*...you will have to bear in mind whether his lack of experience is something that makes you think perhaps his evidence is less cogent than Professor Pye's, and in*

other areas where Professor Pye was challenged, but these are matters that are why I said to you earlier on this trial is trial by jury, not trial by experts…"

(3) The judge went on to say:
"*Mr Edis embarked upon a series of questions which produced an acknowledgement from Dr Pirrie that the ingredients of this particular rock, the make up or the recipe, were available in the Coniston area, and so that he could not dismiss the possibility that those ingredients might have formed elsewhere to form that textural association. If so, if that was right, there could be quite a lot of rocks bearing this vital characteristic…".*

(4) As rightly pointed out by this Court in 2008, Dr Pirrie also accepted that no studies had been carried out concerning the incidence of the characteristic upon which he relied in the Lake District.

220. Mr Whittam submitted that in 2008 the Court had correctly:

(1) Rejected any suggestion that the evidence in relation to the rock was crucial to the prosecution's case at trial.
(2) Concluded that the evidence in relation to the rock was only one element in a strong circumstantial case, and that the evidence at trial left doubts as to whether the rock could not have come from the Coniston area.

221. We have summarised the proceedings in 2008 in paras 85-89 above, in which we have quoted the Court's reasoning in full. Notwithstanding Mr Blaxland's submissions, we reject the suggestion that the Court understated the impact of Dr Pirrie's conclusion being proved to have been wrong, and agree with the Court's factual conclusions that:

(1) The evidence at trial as to how the rock came to be found so as to link it to the body was far from clear and no witness could say with any confidence how it came to be found.
(2) The evidence of the experts must have left doubts as to whether it could not have come from the Coniston area – given that, for example, Dr Pirrie had accepted that he could not exclude the possibly that the characteristic upon which he relied occurred or may occur in rocks in the Coniston area.

222. Nevertheless, it remains the fact that the geological evidence about the rock was one of the aspects of the prosecution's circumstantial case; that it was an aspect that was based on expert evidence; that, if the evidence as to the finding of the rock had been satisfactory, it had the potential in itself to implicate the appellant; and it has transpired that Dr Pirrie's conclusion was wrong.

223. That said, the CCRC's Reference was on the basis of the cumulative effect of its reasons, and so it is to the cumulative effect, and to our consequent view as to the safety of the conviction, that we now turn.

Cumulative effect and safety of the conviction

224. We have summarised the closing speeches at trial in paras 77-84 above, including the circumstantial matters relied on by the prosecution to exclude the possibility that an intruder (including John Rapson) had carried out the murder (paras 80 & 81 above); the circumstantial matters relied upon by the prosecution to exclude the possibility that CP

had run off with a lover and been murdered by him, or thereafter by someone else (para 82 above); and the circumstantial case against the applicant (para 83 above).

225. Further, we have summarised Mr Blaxland's general submissions, including those as to the overall safety of the conviction, including his observations as to the prosecution's circumstantial case at paras 96-99 above, and Mr Whittam's general submission, including his summary of the prosecution's circumstantial case, at paras 100-103 above.

226. We repeat the point, made in para 171 above, that in view of the abandonment of the DNA evidence, the scope of the appeal is significantly different to that envisaged at the time of the Reference.

227. We can deal with Grounds 2 & 3 shortly as, for the reasons that we have summarised in paras 200-207 and 210-214 above, we have concluded that there is no merit in either of them.

228. As to Ground 1, we have concluded, for the reasons that we have summarised in paras 181-191 above that, even without the jury knowing about the non-disclosed information about MW coming off heroin in 2004 and his drug offending in 2004/5, it is highly unlikely that they relied on his evidence at all. Equally we have concluded that, even if the jury did rely on MW's evidence to some extent, and even if the material had been deployed in cross-examination and might have undermined MW's credit even more that did not, viewing Ground 1 in isolation, cause us to doubt the safety of the conviction because of the strength of the prosecution's case.

229. As foreshadowed in para 191 above, we now turn to the consideration of the combination of Ground 1 (upon most favourable basis to the appellant, i.e. that the jury might have relied on MW's evidence to some extent and that deployment of the material in cross-examination might have undermined his credit even more – albeit a basis contrary to our principal conclusion on Ground 1, namely that it is highly unlikely that the jury relied on MW's evidence at all) and Ground 4 (in relation to which it is not disputed that Dr Pirrie's conclusion at trial was wrong – but in the context that there were, in our view, significant issues at trial both as to the provenance of the rock and the value of Dr Pirrie's conclusion).

230. Consideration of the safety of the conviction, in the context of the combination of Grounds 1 & 4, necessarily involves an evaluation of the strength of the prosecution's circumstantial case, together (as foreshadowed above) with why we concluded that its strength means that Ground 1 alone does not cause us to doubt the safety of the conviction, and whether the combination of Grounds 1 & 4 causes us to change that view.

231. We underline that:

    (1) Mr Webster made clear throughout that the circumstantial evidence was the principal basis upon which the prosecution case was advanced.
    (2) In the particular circumstances of this case it was incumbent on the prosecution to both inculpate the appellant and (whether thereby or otherwise) to exclude any realistic possibility that another had murdered CP - whether or not other candidates were suggested by the defence.

(3) Thus, the circumstantial case had not one but three aspects, namely evidence which:
   (i) Excluded any intruder, including John Rapson – summarised in paras 80 & 81 above.
   (ii) Excluded CP running off with someone and being murdered by them or by someone else thereafter – summarised in para 82 above.
   (iii) Inculpated the appellant – summarised in para 83 above.

232. Notwithstanding the points made in closing by Mr Edis (see para 84 above) and Mr Blaxland's submissions, in our view (even without including the evidence inculpating the appellant) the circumstantial evidence excluding others was self- evidently strong.

233. It will be recalled that in addition to the summary (in para 83 above) of the circumstantial evidence relied on at trial to inculpate the appellant, we have also set out Mr Whittam's distillation of that evidence (see para 101 above).

234. In evaluating that evidence, we took into account the points made by Mr Edis in closing and by Mr Blaxland in his submissions (summarised in paras 97-99 above).

235. Nevertheless, as indicated above, we concluded (combining the evidence excluding others and the evidence inculpating the appellant) that the circumstantial case against the appellant was very strong.

236. Our reasons, which must be considered in combination, include the following:
   (1) The evidence excluding others was self-evidently strong.
   (2) There was no credible sighting of CP after Friday 16 July 1976, and (we observe) that must be viewed against the background that there was, eventually, a missing person inquiry in 1976/7.
   (3) Nor did CP access any of her bank accounts, sole or joint, after 16 July 1976.
   (4) The preponderance of the evidence was that CP was looking forward to the summer holidays with her children, and to visiting her niece on Sunday 18 July 1976 (which she failed to do).
   (5) The evidence that CP was devoted to her children was overwhelming, and it would have been totally out of character for her to voluntarily abandon them, without so much as a word, on the day that they were having a treat in Blackpool, and to completely fail to get in touch with them thereafter, and to fail to tell the appellant where she was, and to completely fail to get into contact with any friends or other family member.
   (6) If CP was leaving 'Bluestones' voluntarily it would have been out of character for her to leave her rings behind and, in any event, leaving her handbag and purse behind would make no sense at all.
   (7) Thus, and notwithstanding the logistical problems posed by the children, there was a strong inference that CP had been murdered at 'Bluestones' on Friday 16 July 1976 or Saturday 17 July 1976.
   (8) The appellant's account was that he had last seen CP at 'Bluestones' in the morning of 17 July, at which point she was dressed in her nightdress.
   (9) CP was still wearing her nightdress when her body was found.
   (10) Having, on his account, been told by CP on the Saturday morning that she was unwell, the appellant's conduct on allegedly finding her gone, i.e. not immediately

contacting anyone, whether local hospital, doctor, friends or family made no sense at all – unless he knew that she was dead because he had murdered her.

(11) Likewise, the appellant had never made an attempt to check the joint bank account, or to put a stop on it.

(12) Equally, the killing of CP on 16 or 17 July gave the maximum time before she was next expected to attend school and was likely to be officially missed, and the appellant did not report her missing until after she had failed to attend school at the beginning of term – which made no sense unless he knew that she was dead and was seeking to obtain the maximum period of time for the trail to go cold.

(13) When he eventually told Ivor Price that CP was missing the appellant made no enquiry as to whether he (Ivor Price) had had any contact from her, which was strange – unless the appellant knew that CP was dead.

(14) CP's body was deposited in Coniston Water in the area that the appellant had frequented and sailed since childhood, where it was not necessary to sail far out in order to try to deposit the body in deep water.

(15) The appellant had a sailing dinghy at the material time.

(16) The outer bag used to wrap the body was made from CP's pinafore dress, to which the appellant would have had ready access at 'Bluestones'.

(17) Like the murderer, the appellant had:
   (i) Skill in all the climbing and sailing knots used to tie the body.
   (ii) Access to a green rucksack.
   (iii) A strong incentive to package the body into as small a mass as possible and to get rid of it.

(18) Putting aside Mr Ridyeard's contested evidence as to the use of the appellant's claw hammer, the flattened lead piping used to weigh the body down had come from a high cistern lavatory, and the toilet pan for such a lavatory (but not its piping) was eventually found at 'Bluestones'.

(19) If the jury were sure that the Youngs were on the beach adjacent to Bailiff Wood, which was a conclusion that was open to them, then the appellant matched the aspects of the sailor's description given by Mrs Young.

(20) The appellant failed to make the usual child care arrangements at the beginning of term in September 1976.

(21) Perjury was admitted, and the evidence that the appellant had told the other lies alleged was strong.

237. Against that background, we have further concluded, after testing our provisional view, that the circumstantial case remains very strong and that the combination of Ground 1 (which does not relate to the circumstantial case at all) and Ground 4 (which relates to only one aspect of the circumstantial case, which we have ignored when considering the strength of that case) does not cause us to doubt the safety of the appellant's conviction.

238. Finally, because the fresh evidence does not afford a ground for allowing the appeal, we formally decline to receive it.

Conclusion

239. For the reasons set out above, we have no doubt as to the safety of the conviction. Therefore, the appeal is dismissed.

Appendix:

Schedule of Dr Tapp's accounts re the implement used to inflict injury to Carol Park

Number	Date	Where Found / Reported	Account	Reference
1	15.10.1997	Coroner's Report	"…These could be in the form of blows with a heavy blunt object or by kicks, but the appearance of the teeth and the anterior border of the zygoma suggests strongly that the implement also had a sharp edge on it … the teeth had the appearance of shaving off in a downward motion – some tissue was shaved off this also indicates the weapon had an edge… An axe or chopper could have done this. I don't think a piece of wood…"	Annexe C Document 3 Pages 272 – 273 of the CCRC Reference
2	03.11.1997	Police witness statement	"… heavy blunt object or by kicks, but the appearance of the teeth and the anterior border of the zygoma suggests strongly that the implement also had a sharp edge on it …";	RN Appendix. Document 2
3	2000	Pre-Trial documentary entitled "Ladies in the Lake"	"…one of the girls reconstructed the face, this in fact was particularly useful because it did show downward groves in the teeth which suggested that some kind of axe or a heavy sharp instrument like an axe had been used to smash the face in. This gave me the first clue about how she might have been killed."	Recording

4	02.06.2004	CPS minute sheet completed by Phil Bates, a CPS Senior Crown Prosecutor, addressed to Jem Bullimore, a CPS Caseworker	"DS Marshall had contacted me today … Dr Tapp has examined the ice axe – he does not think it was used as the murder weapon although he believes the weapon used was an axe".	RN Appendix. Document 3
5	22.06.2004	Conference note completed by Jem Bullimore during conference at Lincoln House Chambers (Dr Tapp NOT present)	"Dr Tapp says injuries consistent with weapon that has both blunt and sharp sides e.g. axe. Also says she may have been kicked. Didn't think it was an ice axe."	Para 91 of the CCRC's statement of reasons & RN Appendix Document 1
6	07.09.2004	Conference note completed by Alistair Webster QC during conference at Lincoln House Chambers (Dr Tapp present)	"The axe which was recovered had a long handle. If it had been held at the end, it would have been an unwieldly implement. There is nothing which would exclude the axe as the cause of the injuries but the missing bone fragments make it impossible to identify a particular weapon with any certainty" and "the downward grooves in the teeth could have been caused by the claw of a hammer. They are suggestive of a sharp edge."	RN Appendix. Document 4
7	01.12.2004	Handwritten note of Dr Tapp's evidence at trial	"heavy object with edge to it" and "I think a minimum of 2 blows, impossible to put a maximum. Both blows would have involved an instrument with a sharp edge" and in re-examination "an axe is the sort of instrument causing this injury I am sure there was minimum of 2 blows with something with a sharp edge"	Page 427 of the CCRC Reference

8	26.01.2005	Mr Justice McCombe's Summing Up	"the blows would have required a heavy instrument, probably with a sharp edge, and in his view (Dr Tapp's view) it was an axe that usually causes injury of this type"	Page 151 of the CCRC Reference
9	16.01.2007	Post-Trial documentary entitled "Real Crime UK – The Lady in the Lake"	"… the cause of death was almost certainly related to the injuries to the face, all the bones of the face had been smashed… and the teeth had been damaged… there had been a cutting action as well… one possibility would be an ice axe…"	Recording
10	24.11.2014	Post-Trial documentary entitled "Countdown to Murder – The Body in the Lake"	"…the main cheek bones had been smashed and the teeth had been knocked out of them, this was a lady who received severe facial injuries, the facial injuries had been caused by something heavy, and some, with something that is sharp…and there would have been a lot of bleeding at the site."	Recording

11	09.05.2018	Witness statement obtained by the CCRC.	"During my time as a Home Office Pathologist I was concerned with the post mortem examination of the deceased victim Carol Park. Due to the nature of the recovery of the body of Carol Park the body was decomposed. I was concerned with the inquest of Carol Park and also made a statement dated 3rd November 1997. As part of my findings I observed that Mrs Park had received injuries to the skull which I stated was caused by two or more heavy blows with an instrument that had a sharp edge to it. I wish to make clear that when I say it was a sharp edge from a heavy instrument and much has been suggested as to the implement being an axe I am not referring to the blade of an axe. I am referring to the head of the axe which normally is a machined block of metal with edges to it. If it was an axe then the contact to cause the injuries to the skull came from the head of the axe and not the blade. I have been asked if I had a meeting with DS Marshall, Cumbria Constabulary … I can say I did have a meeting with DS Marshall on the 12th May 2004. I can't recall after all these years if I was shown an ice axe but it is quite possible he did show me this… I have today been shown an ice axe WGL/NA Exhibit 1 at trial. On viewing this item I can say it is unlikely that this was the implement that caused the injuries to the skull of Mrs Park although this cannot be excluded. I gave evidence at trial on the 11th December 2004 I have no recollection of being shown the ice axe in court whilst giving my evidence.	Annexe C Document 19 Pages 489 and 490 of the CCRC Reference

REAL CRIME LADY IN THE LAKE ROLL 20 INTERVIEW EDMUND TAPP

	INT This is tape twenty interview with Edmund Tapp. And first of all if you can give us an idea of the condition of the body when you first started to examine it.
	EDMUND Well the condition of the body essentially is that most of it had been converted to adopesia erm .. other parts ..
	INT Again I understand but I think if you can talk in layman's terms.
	EDMUND It was.. (CHATTING).. not sure how you want to me to explain it.. (CHATTING)..
	INT The texture and then .. within that answer you can describe the way it was.. (CHATTING).. is that the doorbell (NOISE AND CHATTING IN BACKGROUND).. so the condition of the body.

	EDMUND Erm its difficult to describe the exact condition of the body erm because different parts were effected by decomposition in different ways. But the bulk of the body erm had a kind of pale erm creamy appearance and erm it has a waxy texture, this effected the whole of the trunk of the body and the legs and the upper part of the arms. The feet and the hands and the whole of the head and neck had disintegrated completely course mortem change was such.. that all the soft tissues from those areas

	erm had a disappeared and were just left with bones.
	INT What is that.. (CHATTING).. so what was the condition of the body after twenty one years,.
	EDMUND Yes well the condition of the body of course, after twenty one years is is not in fact easy to describe. Erm but.. part of it and the main part of it in fact had been converted to a kind of pale cheesy like material, erm this involved the trunk and the arms and the legs.. the the rest of the body, particularly the hands..
	NOISY IN BACKGROUND
	INT For the last time the condition of the body

	EDMUND Well the condition of the body is not easy to describe because different parts were effected by post mortem change in different ways but the bulk of the body the trunk and the different parts of the arms and legs erm were in fact .. they looked like cheesy material really they were solid but.. but soft and it has a waxy or cheesy feel it.. feel about it when you touch it and a kind of creamy look about it. Erm the other parts of the body particularly the head and neck.. the hands. .were were of course skeltalised in other words all the tissue all the soft tissue had disappeared from them and the bones were in pieces because all the tissues that normally hold the bones together had disappeared.. due to

	post mortem change.
	INT And given that twenty one years had passed before the body was pulled out of the lake, how well preserved was the body considering where it had been..
	EDMUND Well one..
	NOISE IN BACKGROUND
	INT So considering it had been in cold water.. are lakes a good place really for a body to..

	EDMUND Yeah well .. this change has occurred this waxy change had occurred to the body then the.. body won't decompose any further it will keep it indefinitely.. erm so that the outlines of the body were quite well preserved but course the insides the organs inside the body were largely erm had largely disintegrated although you could recognise some parts .. you could recognise parts of the heart and some of the intestines.
	INT And what erm.. is the likely cause of death
	EDMUND Well the likely cause of death the lady certainly has severe injuries to her face the bones of her face have been broken into many fragments.. erm and there were marks on the teeth which indicated that the.. kind of slicing down on the teeth.. splitting part of the INAUD parts of the teeth away so there

	is no doubt that she had severe injuries to her face and I think this is likely to have been the cause of death, whether she died from the shock and the haemorrhage associated with that or whether in fact she inhaled blood there would be considerable bleeding with this, erm I don't know.
	INT Just do the first part of that again the likely cause of death.. the injuries to the face and..

	EDMUND The cause of death was almost certainly related to the injuries to her face, there had been a lot of damage to the face erm all the bones of the face had been smashed and the teeth had been damaged parts of the teeth had been stripped off by something sharp passing down over them.. erm now under these circumstances you will in fact get quite a lot of bleeding erm indeed you might die from shock and haemorrhage associated with that, and on the other hand there is a possibility that she inhaled if she was still breathing she inhaled some of the blood when it gets into the lungs that in itself can cause death.
	INT So explain in a brief answer that erm because of the nature of the injuries to the face using a sharp instrument this was INAUD..
	EDMUND Say that again
	INT If you can start that the nature of the injuries the

	breaking of the bones .. you think it was a sharp object that was used .. it could have been some kind of axe or whatever or.. indicates..

	EDMUND Well the.. the cause of the injuries to the face erm something obviously heavy had been used to break the bones on the face and particularly the markings to the teeth and the markings one of the bones of the face indicated that.. there had been a cutting action as well so I think the most likely thing was some kind of axe.. something that was heavy but with a sharp edge to it, that in fact erm would produce the kind of features that we have seen.
	INT So this would be classed as a violent death
	EDMUND Oh yes its likely that all these injuries occurred at the same time. Erm and under those circumstances yes someone has smashed the face with an .. an instrument such as I have described erm certainly twice and probably many more times than that.
	INT Can you explain for us how many blows with such an instrument it may have taken to kill Carol Park and whether its possible to say whether the blows continued after death just because of sheer obliteration of the face the type of instrument used whether it was simply two blows and that was it.. is it possible to know.
	EDMUND Well its not possible to say how quickly she died

	but its likely she died very rapidly the kind of damage that we have seen to the face and the bleeding that would be associated with it would cause death very rapidly.

	INT Okay and how much of the .. actually obliterated I mean.. and why might that have happened we talked about a number of reasons why they might have gone INAUD its perhaps I suppose as a pathologist you would know the best way to kill someone and its not the most common way is it to end someone's life …
	EDMUND Well .. yes injuries localised to the areas that Carol park had are rather unusual if you get injuries of that type the lower part of the face, there are often injuries to the rest of the head.. erm its unusual for someone to be.. have the face damaged in that particular way, whether in fact he was trying to obliterate her face, so that she wouldn't be recognised once she was found.. I don't know but I think that's a distinct possibility.
	INT Okay and .. did you say you're not sure how many blows is impossible to tell.
	EDMUND Its impossible to discern exactly how many blows but I think there were certainly at least two because there was damage to the teeth on each side of the face and I think to cause the amount of damage to the bones of the face.. then it its likely

	to be considerably more than two but certainly a minimum of two.

	INT Okay and tell me.. (CHATTING).. is it possible to tell if she might have been conscious during the attack..
	EDMUND Well certainly in the early part of the attack she must have been conscious because there are there were injuries erm to the hand to the left hand erm which in fact, were the kind we see when someone has raised their hand to the face or head.. to erm try to protect themselves call them defensive injuries so certainly at some stage in the early stages of the attack she must have been conscious to be able to have done that.. but once she… the blows started then I would have thought she would loose consciousness very rapidly.
	INT Okay and is it possible to tell how soon after a dead body was put into the INAUD position.
	EDMUND Well I think that the body was put into the foetal position very rapidly after death.. rigor will come on between two and four hours erm and erm I think that.. soon after death she was trussed up with the ropes in the way that she did otherwise she would have become too stiff to do that.. the the possibility was considered as to whether she might have been trussed when rigor mortis had passed off say after two or three days.. but.. erm I I think that

	this is.. erm unlikely.

	INT Okay and we talked earlier about the fact that the summer of seventy six when she was killed and the body was deposited in the lake was one of the hottest summers on record erm and there is some kind of feeling that here is a passage of time be it possibly only a week erm.. between the murder and the disposal of the body so. how could you tell how the body may have been kept during that time.
	EDMUND Well certainly as the weather was hot during that period then post mortem change would occur very rapidly and that certainly something must have been done to allow it .. to remain in its .. a state whereby erm this.. change can occur which will preserve it indefinitely this cheesy change so I think the most likely thing is that the body was kept in the cold possibly in a freezer in the.. in a erm.. sorry..
	INT Do that one again and if you could.. chest freezer.. start that again .. how the body may have been stored between the murder and the disposal of the body.
	EDMUND Yes, well there seems to have been a gap between the murder and the disposal of the body and .. exactly what happened during that time is not possible to say but I think the body must have been

	kept cold at least because otherwise post mortem changes would have occurred and we wouldn't have allowed the changes which preserved it erm all for the twenty years or so wouldn't have been allowed to take place, whether it was put in a chest freezer or something like that I don't know. but it was trussed up sufficiently well with the legs bent flexed erm over the front of the abdomen so it might well have been able to have been small enough to have fitted into a chest freezer.
	INT Have you ever seen obviously you've been in the business a long time.. erm but have you ever seen .. a body trussed up so expertly I mean its quite incredible to see really isn't it.
	EDMUND Yes I have not seen a body that's been trussed up quite as.. remarkably as this but I have seen erm I did have one body that was trussed up and left and in a television box.. a box that contained a television and deposited on some waste ground so bodies are sometimes erm.. trussed up in this way but this was in a very elaborate series of erm ropes and knots and string around it.
	INT What was the first INAUD.. as fascinating as it is I'm sure.. INAUD.. just left on..
	EDMUND Yeah it was INAUD on the edge of the motorway (CHATTING)..
	INT

	It is quite unusual to truss the body up in that manner really.. that's not a typical every day occurrence in your job,..,

	EDMUND It is unusual to find the bodies trussed up in the way that erm.. this in the way Carol Parks was erm I have never seen one trussed up so elaborately with such a series of ropes and knots and.. erm string to to attach to the various parts of the body.
	INT And would it be possible to tell from where you erm saw the body after twenty one years whether it had been incredibly effected or whether there would have been any.. she was bound so tightly wasn't she and .. all of those ropes clearly still survived.
	EDMUND I think the body was INAUD was very tightly and I don't think there would be any possibility even if she was alive that she could move.. but once those ropes were in position then there was no way in which erm any part of the body could move except when it decomposed such as the head and when the head decomposed obviously then.. those parts fell apart.
	INT And so tell us how the process of identification started really the piecing together of the skull and then obviously the teeth and the dental records.. what INAUD to try and start the identification process.

	EDMUND Well the identification.. erm essentially vested on the clothing that she was wearing that.. in bodies is often.. erm a good way of identifying it but the best way of course is through the teeth and when we were.. if we were able to clamp the teeth and INAUD and he was able to identify them then as the teeth of Carol Parks.
	INT Tell us a bit about how the body was dressed.. she was in still in her INAUD pinafore dress .. I assume that everything had to be cut away and that was.. something that you would have done.
	EDMUND Yes when I received the body it was still in the plastic bags and we remove these in layers and remove the various other pieces like the.. pinafore dress we didn't recognise this as a pinafore dress a the time and then then when that was removed of course we came down to the nightdress that was.. quite clearly easily recognisable as a baby doll type night dress.
	INT Right.. I think if you could do that one for me again.. just give me a bit more detail on how the body was wrapped..
	EDMUND The body was contained essentially within two bin bags but when they had been removed there was.. material which turned out to be in fact a pinafore dress which had been drawn up at one end and

	coveted the top part of the body.. and when we removed that then of course we came down to the body itself and the fact that there was a night dress on the body.
	INT How elaborate is that.. packaging the body like that is that quite unusual.
	EDMUND Yes.. it was difficult at the time to know exactly what was going on.. erm because normally if a body had been wrapped up in . then it would be in bags rather than in a piece of clothing like the pinafore dress so I am not sure why the pinafore dress was used in that way.
	INT Erm.. okay. Would the elaborate packaging have kept it from smelling or was there not enough.. it would be airtight wouldn't it.. if he did put in a freezer that he possibly did.. I am just trying to figure out why he would go to such bother to make such an elaborate packaging of the body really whether it was to stop it smelling or what.
	EDMUND I think it had been packaged in that way because he intended ultimately to put it in the water and he wanted to have it securely tied up so he could put weights on it to keep it down under the water so that it wouldn't be discovered erm certainly.. there wouldn't be.. for the first twenty four hours or so there wouldn't be much smell and I think if it was kept in the freezer. Then there would be relatively

	little smell then because again.. erm .. as I have said that there was relatively little post mortem change on the body.. I think the change of the hands of the head and neck occurred essentially whilst it was in the bag and under those circumstances the body was already disposed of by that time.
	INT Okay can you think of anything else. (CHATTING)..
	EDMUND Well I think I must have said that it was some kind of axe, I thought it was a heavy object with a sharp edge to it and the way the teeth were struck down in that way.. then erm an ice axe would in fact erm produce that kind of injury.
	INT Okay. (CHATTING) just do that one again.. erm if you could drop in ice axe would be useful for us and I think erm.. maybe you know the teeth are quite good.. they seem to be.. certainly the police said it seemed obvious that it could be something like an ice axe..
	EDMUND Well obviously we discussed with the police the possible objects that might have caused this kind injury, I initially suggested some kind of axe but then when we looked at the teeth and saw that they were .. there were stripping of the parts of the teeth in a downward dredge it looked erm one possibility would be an ice axe.

	CHATTING..

	INT Okay so erm tell us about the wounds to the hand.
	EDMUND There was an interesting wound in fact to the left hand it involved erm the bone in the main part of the hand erm below the little finger, erm and I think that this had been cause as she raised her hand up to her face. Erm to protect it, cause this edge here would in fact be damaged in that way.
	INT Was that okay..
	CHATTING
	INT Hold it .. so the nature of the wound.
	EDMUND The wound on the hand was quite interesting this was the left hand, erm and in fact, it involved the bone just here and this is the kind of injury that you would get it if it was held up to the face to try to protect the face I think it was done that was the way that the injury occurred. Well as we say if he got a few days to think about it then..
	INT He .. well everyone who knew him .. describes him as a control freak.. which would.. taken some time to the extent that some of the .. the stitching along the bottom of the pinafore he had cut off the ends when he finished stitching.. astonishing really.. makes you wonder if he did INAUD in the freezer her eyes would have been staring up at him..
	CHATTING.
	EDMUND There is no way in which you could say from the body whether she INAUD.. (CHATTING) you can't analyse it its just fatty acid crystals.
	CHATTING

	EDMUND There was just a bit of scalp left there. and the other thing we looked at.. or couldn't prove it was.. that is dark there. that's the INAUD the main artery traverses inside the skull and erm that just makes you think that it will be a INAUD haemorrhage he must have had something handy you know..
	INT I don't keep an axe
	CHATTING
	END OF REAL CRIME LADY IN THE LAKE ROLL 20 INT DOCTOR EDMUND TAPP