Privy Council Appeal No. 14 of 2001

(1) Michael Adams and
(2) Frederick Lawrence *Appellants*

v.

The Queen *Respondent*

FROM

THE COURT OF APPEAL OF JAMAICA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL,

Delivered the 18th March 2002

Present at the hearing:-

Lord Steyn
Lord Hoffmann
Lord Rodger of Earlsferry
Sir Andrew Leggatt
Rt. Hon. John Cameron (Lord Coulsfield)

*[Delivered by **Lord Rodger of Earlsferry**]*

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1. The appellants are Michael Adams and Frederick Lawrence who were tried, along with two other defendants, on a charge of non-capital murder before Walker J and a jury in the Home Circuit Court, Kingston between 22 February and 2 April 1993. The charge arose out of an incident on 26 May 1990. The appellants were convicted of murder, while the two other defendants were acquitted. The judge sentenced the appellants to life imprisonment and specified that they should serve a period of imprisonment of ten years before becoming eligible for parole. They appealed against their convictions and on 7 April 1995 the Court of Appeal (Forte and Downer JJA and Patterson JA (Ag)) dismissed their appeals. The appellants have remained in prison while the appeal process has run its course.

2. For various reasons - in particular, problems in obtaining the necessary documents - which were not the fault of the

Board heard and granted Adams' petition for special leave to appeal. Similarly, in the case of Lawrence it was not until 17 July 2000 that the Board granted special leave to appeal. The result is that their Lordships are dealing with a case where the actual events occurred almost twelve years ago and where the trial itself took place roughly nine years ago. One effect of the passage of time is that, in the event of the appellants' convictions being set aside, there could obviously be no question of a retrial. It is also proper to mention by way of introduction that, despite considerable efforts on all sides to find a full transcript of the evidence, none has come to light. In these circumstances counsel had to conduct the appeal to the Board on the basis of the transcript of the evidence of one witness, Constable Addison, and of the judge's summing-up. As it happens, in his summing-up, which was spread over four sitting days, the judge gave a very full account of the evidence and statements which were before the jury. In the event their Lordships have found it possible to deal with the appeal on the basis of the available material.

3. The evidence showed unmistakably that Dennis Williams died as a result of being stabbed with a knife and "chopped" with a machete outside his mother's house at about 8.30 in the evening of 26 May 1990. The medical evidence indicated that the deceased had received 8 stab wounds and 6 chops. The injuries had been inflicted with severe force and the deceased's left hand had been completely severed at the wrist, while his right forearm was severed at the elbow. It appears that previously the deceased had been in some kind of altercation with Claudia Williams, the common law wife of Lawrence. Lawrence was a police officer. The principal thrust of the Crown case was that, as a result of that earlier incident, Lawrence determined to kill the deceased and he involved the other defendants in a plan to carry this out. According to the Crown, all the defendants were present and participated in the killing. The fall-back position of the Crown was that, even if the jury were not satisfied that the plot had been proved, they should still be satisfied that the four defendants had all been present and actively involved in killing the deceased.

4. Adams gave evidence at the trial. His defence was that, while he had indeed chopped the deceased, he had been acting in self-defence. The deceased had jumped out at him saying "Pussy hole, a long time me wah kill you" and had attacked him with a machete. Adams used a piece of stick, which he happened to have in his hand, to ward off the blow. The deceased dropped the machete and the two men "collared up" – struggled with one

deceased's waist which seemed like a gun. Being afraid that the deceased would shoot him, Adams took a knife from his pocket and stabbed the deceased in the back and chest. During the struggle, it seemed to Adams as if the gun dropped out of the deceased's waist. Adams got away from the deceased and, when he saw the deceased searching in bushes on the opposite side of the road from his mother's house, Adams thought that he was searching for the gun. He therefore took up the machete and aimed for the deceased's hand. He chopped several times but stopped when Lawrence fired a shot. Adams then walked with Lawrence to the Linstead police station where he handed in the knife and the machete. Their verdict shows that the jury must have rejected Adams' evidence and have found that he had not acted in self-defence.

5. It appears that counsel for Adams also contended that, if they rejected the defence of self-defence, the jury should find Adams guilty of manslaughter rather than murder. This must have been on the basis of provocation. The trial judge directed the jury, however, that no question of manslaughter arose: Adams had either committed murder or no offence at all. The Court of Appeal decided that, even on the most favourable view of the evidence, there was nothing to suggest that Adams might have lost his self-control or might not have been the master of his mind at any time. They were therefore satisfied that the judge had been right not to leave provocation as an issue for the jury. Adams appealed against the Court of Appeal's decision on this point. His counsel made submissions on it. Although, therefore, their Lordships heard full and helpful argument on the point, for reasons which will emerge, they do not require to deal with it.

6. Lawrence did not give evidence at the trial but made an unsworn statement from the dock. He said that he was coming back from seeing his son, who was unwell, when he heard sounds of crying and of chopping. He was suspicious and pulled out his (police) service revolver. When he went towards the sounds he saw a figure holding up a shiny object. He fired a shot in the air and said "police". The figure dropped the object. He then saw that it was Adams. A crowd gathered and the deceased's brother drove up. He and the deceased's brother put the deceased on the back seat of the brother's car so that he could be taken to hospital. He then escorted Adams to the police station where the knife and machete were handed over. Adams made a report to the police and Lawrence himself gave a statement. Lawrence went back to the scene and there saw a home-made gun being

found close to where he had seen the deceased lying on the ground.

7. Their Lordships note that, according to Constable Addison, the home-made shotgun and a cartridge had fallen out of a black shirt which had been lying, with a red ganzie, outside the gate of the home of the deceased's mother, where the deceased also lived. This was on the opposite side of the road from the area where Adams said that he had seen the deceased searching for what Adams thought was his gun. The home-made gun was found when the police officers, including Lawrence, went to the scene after Adams had handed the knife and machete into the police station.

8. The two defendants who were acquitted also made unsworn statements from the dock. The defendant Matthews said that he had been unwell and had been at home. The defendant Douglas said that he had been with a friend on another part of the road when he heard what sounded like a gunshot. He and his friend just kept walking and did not go to the locus.

9. At the close of the Crown case, counsel for Lawrence, Matthews and Douglas made a submission that there was no case to answer. The judge heard the arguments from counsel for the defence and for the Crown in the presence of the jury. This was in accordance with the prevailing practice in Jamaica at the time. In *Crosdale v The Queen* [1995] 1 WLR 864, 873 F - H their Lordships' Board held that, when considering submissions of no case to answer, the judge should invite the jury to retire and, if he decided to reject them, he should say nothing to the jury about them. Where in any case the jury had remained in court during the submissions, the question for the appeal court would be whether in the circumstances of the case there was any significant risk of prejudice having resulted from the irregularity.

10. On behalf of Adams Mr Thornton submitted that in the present case the irregularity in the judge hearing the no case to answer submissions had indeed resulted in prejudice to his client. The jury would have seen that counsel for Adams had made no such submission and might therefore have drawn the conclusion that the case against Adams was powerful, whereas the case against the other defendants was weaker. On behalf of Lawrence, Mr Jenkins adopted Mr Thornton's submission but argued, differently, that his client might well have suffered prejudice due to the jury seeing that the judge had rejected the no case to

suggested to the jury that the judge thought that Lawrence and the other two defendants were guilty. In his concise and helpful submissions for the Crown, Mr Pantry freely accepted that the course adopted by the judge, though in line with practice at the time in the courts of Jamaica, had been unsatisfactory. The practice had now been changed to conform to the guidance given in *Crosdale*. But he submitted that in the present case there was indeed nothing to show that the irregularity had caused any prejudice to Adams or indeed to Lawrence.

11. It is plain that the course adopted by the judge was unsatisfactory for the reasons given by the Board in *Crosdale*. It was therefore an undesirable feature of the trial. Their Lordships do not consider, however, that the procedural irregularity caused any material prejudice to the appellants. The fact that the jury convicted Lawrence, for whom a no case to answer submission had been made, along with Adams suggests that they drew no significant conclusion as to the comparative strength of the cases against the two men from the fact that a submission was made for one but not for the other. Their Lordships therefore reject the argument for Adams. They also reject the argument for Lawrence. In the first place, the judge expressly directed the jury that, in ruling that there was a case to answer, he was not to be understood by them as having implied that he thought that anyone was guilty of murder - that would be far from the truth. Moreover, as Mr Jenkins acknowledged, by acquitting Matthews and Douglas while convicting Lawrence, the jury showed that their verdicts were not influenced by the fate of the no case to answer submissions. Their Lordships accordingly hold that, although an irregularity did indeed occur in the hearing of the no case to answer submissions, there was no significant risk of prejudice to either of the appellants and the irregularity would not of itself be a basis for allowing their appeals.

12. Mr Pantry accepted that a further procedural irregularity had occurred, this time in connexion with the voire dire on the statements which the police alleged that Adams had made. According to the police, while he was in custody Adams made two statements, the first on 26 May and the second on 30 May. The first statement was to the effect that he had used a machete to chop the deceased but that he had been acting in self-defence. The second alleged statement was considerably longer and comprised an account of events in which Lawrence was portrayed as having played a prominent role both in orchestrating the attack and in carrying it out. According to that version, Adams had in effect

lay the blame on him. This was the Crown's preferred version of events. When counsel for the prosecution sought to lead the evidence of the statements, counsel for Adams objected on the ground that they had not been given voluntarily. The judge then heard evidence, including evidence from Adams, in a voire dire as to the circumstances in which the statements were obtained. In the case of the first statement Adams really accepted that, except in certain limited respects, it reflected what he had told the police on 26 May. So far as the second statement was concerned, however, he said that a police officer had beaten him with a baton and that he had never told the police what appeared in it. At the end of the voire dire the judge ruled that both statements were admissible. Since no transcript of that part of the proceedings is available, it is not known what, if anything, the judge said to the jury when the trial resumed in their presence after the voire dire.

13. In his summing-up the judge dealt with these matters in this way:

> "There was a time you will remember, Mr Foreman and members of the jury, when you were all sent out of court and I held an enquiry in court. That enquiry involved these two statements. At the end of the enquiry I came to the conclusion that both statements were voluntarily given to the police by the defendant Adams, and so I admitted both statements as Exhibits 16 and 17, and they are both in evidence before you.
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> The defendant Adams has maintained that the statement, Exhibit 17, was given by him after he was beaten with a baton by Detective Inspector Benjamin in the presence of Detective Assistant Superintendent Grant. In a moment I am going to read that second statement to you to refresh your memory as to its contents. Your duty is now to give those two statements that I am speaking about such weight as you think they deserve. If you were to think, Mr Foreman and members of the jury, that either one of those two statements was given after Adams was beaten or forced in any way to give it, you would give the statement no weight at all, you would disregard the statement if you were of that view. What you do is to give the statement no weight, so you consider the rest of the evidence in the case, you leave the statement out completely, if you feel that either one of them was not fairly given; if you feel that, especially the second one, was given after the defendant got

> a beating from Inspector Benjamin or any other police officer."

The judge then went over what defence counsel had said about the statements and concluded

> "If you think that the second statement was given in the circumstances in which the defendant says it was given, give that statement no weight whatsoever, I go as far as to say that."

14. In *Mitchell v The Queen* [1998] AC 695 their Lordships' Board held that the judge's decision on a voire dire to determine the admissibility of a confession should not be revealed to the jury since it might cause unfair prejudice to the defendant by conveying the impression that the judge had reached a concluded view on the credibility of the relevant witnesses and of the defendant. As Lord Steyn put it ([1998] AC 695, 703 H - 704 A),

> "The vice is that the knowledge by the jury that the judge has believed the police and disbelieved the defendant creates the potentiality of prejudice. A jury of laymen, or some of them, might be forgiven for saying: 'Well the judge did not believe the defendant, why should we believe him?' At the very least it creates the risk that the jury, or some of them, may be diverted from grappling properly and independently with a defendant's allegations of oppression so far as it is relevant to their decision. And such an avoidable risk of prejudice cannot be tolerated in regard to a procedure designed to protect a defendant."

The Board dealt with a number of other grounds of appeal, all of which they rejected. Their Lordships went on to consider the submission of counsel for the Crown that the judge's directions to the jury had cured the irregularity. They held that the clear and correct directions had cured any deficiency in his earlier observations, but they noted that the major problem was that the judge had informed the jury of his decision as to the voluntariness of the confessions. Lord Steyn continued ([1998] AC 695, 705G–H)

> "This was a serious irregularity, notably because it was calculated to convey to the jury that the judge had arrived at a concluded view that he ought to accept the evidence of the police witnesses and Franklyn Williams and reject the evidence of the defendant. That was the basis on which the

number of days. The judge did not subsequently tell the jury to ignore his decision as to voluntariness of the confessions. For these reasons their Lordships cannot accept the Crown's preliminary submission that the irregularity was ex post facto cured."

It was therefore necessary for the Board to consider the potential impact on the trial of what they described as "undoubtedly a material irregularity" and the test they applied was whether, if the irregularity had not taken place, or if there had been no misdirection, "the jury would inevitably have come to the same conclusion" ([1998] AC 695, 706A).

15. On the basis of this authority, Mr Thornton argued that the passage in the trial judge's summing-up where he told the jury that he had come to the conclusion that both statements were voluntary constituted a material irregularity. Moreover, it had been exacerbated by the fact that he had immediately contrasted his view with the position maintained by Adams, that he had given the statement after he had been beaten by one of the police officers. Nor had the judge corrected the irregularity by telling the jury that he ought not to have said this and that they should ignore it. The directions to the jury to consider for themselves whether the statement had been given voluntarily, and to give it no weight if they thought that it had been given in the circumstances described by Adams, could not cure the risk of serious prejudice. The Board could not be satisfied that the jury would have reached the same verdict if the judge had not revealed his decision on the voire dire in this passage in his summing-up. In addition it had to be remembered that there was no way of knowing what more the judge might have said to the jury immediately after the voire dire.

16. Mr Pantry accepted that this ground of appeal raised a potentially more serious issue than the irregularity surrounding the submissions of no case to answer. None the less he submitted that the significance of what the judge had said required to be assessed in relation to the summing-up as a whole. Mr Pantry referred to *Thompson v The Queen* [1998] AC 811, 843 where, in dealing with the judge's comment in her summing-up that she had held that the statements in question were voluntary, Lord Hutton, giving the judgment of the Board, noted that it was a brief observation in a lengthy summing-up and that the judge had not elaborated on the statement. Nor had she said that she believed that the defendant had not been ill-treated by the police and that

judge had gone on to emphasise that it was for the jury to assess the circumstances in which the statement had been taken and to attach whatever weight they deemed fit to the statements put in evidence. The judge had also reminded the jury of the accused's evidence about the circumstances in which the statements had been obtained. The Board concluded that, when viewed in the context of the summing-up as a whole, the judge's statement did not constitute a material irregularity. Similarly, said Mr Pantry, in the present case the judge had only made a brief mention of his ruling. He had not said that he had believed the police officers and disbelieved Adams. He had gone on to give very full directions that it was for the jury to consider the issue of voluntariness for themselves and, if they accepted the account given by Adams, to give the alleged statement no weight at all. In these circumstances there had been no material irregularity.

17. There is force in the argument advanced by Mr Pantry. If they could be satisfied that the only possible source of prejudice was the passage in the summing-up, it might well be that, by a similar process of reasoning to that adopted in *Thompson*, their Lordships could conclude that no material irregularity had occurred in this case. The difficulty is, however, that, because the transcript of the earlier stage of the proceedings is missing, they do not know what the judge may have said to the jury at the end of the voire dire. Any comment at that stage might itself have been a material irregularity. At the very least it would have provided the background against which the relevant passage in the summing-up would fall to be assessed. Without that background and giving the benefit of every doubt to the appellant Adams in these circumstances, their Lordships are unable to hold that the undoubted irregularity was not material. They do not require, however, to consider the effect of that irregularity in isolation since it is better considered along with the effect of the judge's misdirection about the discovery of the home-made shotgun.

18. In brief, the judge directed the jury that, on the basis of the discovery of the home-made gun at the scene, it was open to them to infer that Lawrence had planted it after the incident, in order to bolster a false plea of self-defence by Adams. Both before the Court of Appeal and before the Board counsel for the Crown accepted that the judge had indeed misdirected the jury on this matter but argued that the appellants' convictions should none the less be upheld by applying the proviso to section 14(1) of the Judicature (Appellate Jurisdiction) Act. The Court of Appeal accepted that argument. Before the Board counsel for the

19. The judge first mentioned the matter when he was explaining to the jury the inferences that the Crown were asking them to draw from various aspects of the evidence. He said:

> "Another inference that you are being asked to draw, and you have to decide whether it is reasonable or not, has to do with the home-made gun, I believe Exhibit 6. The prosecution is saying, and to use the words of the Deputy Director of Public Prosecutions, 'That gun was a plant, it was planted on the scene.' The defence is saying, not so. Adams is saying that Dennis Williams was armed with that gun, he had it somewhere in his waist. Adams told you that as they grappled up in the road that night, he felt something like that gun in Dennis Williams' waist and Adams is saying in the struggle between them, the gun fell out of Dennis Williams' waist and laid where it was found by Constable Addison later on after the incident. So, you see, each side is saying something different about that gun, and that gun you may think is important, that home-made gun. The prosecution is saying and asking you to draw the inference that that was a plan, it was put there by somebody so as to make it appear as if Dennis Williams had had it. The prosecution is saying that after this incident was over Constable Lawrence left that scene and went to the Linstead Police Station and then returned to the scene some time after with Constable Addison and others.
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> Constable Addison told you that when they got back to the scene he wasn't watching what Lawrence was doing, he wasn't paying attention to any of the others, he was searching for a missing left hand, bloodstains, a shirt, and to see, he wanted to see exactly where the scene was of the incident, that is what he was searching for, he wasn't watching any of the others. Until all of a sudden a DC, a District Constable who was in the party, called out to him, and when he went he saw a black shirt on the banking on the same side of the road where the Williams' premises was. And he took up the shirt, and he showed you, he held it up and shook it and out of it dropped the home-made gun.
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> The prosecution is saying that the evidence indicates that all the struggling took place on the other side of the road, and if you believe the evidence that it was on the other side of the road that the collaring up and the struggle took place, in

the road or on the opposite side of the road, how could the gun reach into the bush on the Williams' side of the road? Not only reached into the bush, how was it wrapped up in this shirt so that the shirt had to be shaken? Who wrapped it up? The prosecution is saying it was, asking you to draw the inference it was planted. The prosecution is asking you to say that, and this depends on whether you believe the evidence of Constable Addison that it could well have come from the Linstead Police Station. The prosecution is saying that Constable Lawrence had the opportunity to get it from the station.

Constable Addison told you that he had seen guns like that home-made gun. He had seen guns like that before. Where did he see them? At the Linstead Police Station. And he told you he also saw guns like that when he was stationed at Spanish Town Police Station. He told you sometime they got in those guns from criminals and they kept them in a safe at the station. That was his evidence. And the prosecution is asking you to draw the inference that Lawrence must have gone to the station and taken that gun back with him to the scene and put it, when nobody was watching him, put it carefully into the bush. That is a matter for you.

It's important, it's important for you to decide whether that is an inference that you are prepared to draw in this case, that that gun was planted. The prosecution is saying that it was, and that Lawrence is the man. He had the opportunity to do that. It is a matter for you to say whether he did do that. Is that a reasonable inference which you are prepared to draw in this case? That is entirely a matter for you to decide. But it is an important matter for you to decide. Because it changes, the whole complexion of the case changes depending on whether you believe that gun was planted or whether you believe Dennis Williams had that gun in his waist. Because it had a bullet in it, it was loaded."

The judge returned briefly to the same point when reminding the jury of Constable Addison's evidence:

"And then he told you that he has seen a gun like Exhibit 6 before that night, though he hadn't seen one with a board handle. He had seen a gun like this, Exhibit 6, except for the board handle at the CIB office at Linstead. The gun

that he saw, which resembled this gun, was connected with another case. He said he had also seen a gun like this, Exhibit 6, at the CIB office in Spanish Town when he was stationed there in 1985. He said guns like Exhibit 6 are usually kept in a safe at the police station.

So, Mr Foreman and members of the jury, the prosecution is saying that this gun was planted on the scene; that Dennis Williams never had it. This witness is telling you that he had seen a gun like this right at the Linstead Police Station, one which had been connected with another case. So, if the truth is that Dennis Williams did not have this gun, where did it come from; who put it on the scene? Where the person get it from to put on the scene, if it was put on the scene? Who had the opportunity to put it on the scene? This witness said that his attention was alerted by DC Byfield, who worked right at Linstead at the time.

The prosecution is saying Constable Lawrence went to the Linstead Police Station after he left the scene. He walked with Adams to the Linstead Police Station, two and a half miles, if you believe Adams. The Williams' premises are situated about two and a half miles from the Linstead Police Station and Lawrence left the scene and went to the station and then went back to the scene with Byfield and Addison and others. Who had the opportunity to put that gun on the scene, if Dennis Williams didn't have it? You ask yourselves that question when you come to consider your verdict. If Dennis Williams had it and it dropped from him, Adams said that they grappled and he felt like when the gun dropped out; he didn't feel the gun again, so he figured it dropped out. Where would the gun drop now? They are grappling on the opposite side of the road to where Mrs Williams live, where would the gun drop, how could the gun reach the opposite bank? How could the gun be wrapped up in a shirt? It can't wrap itself, somebody had to wrap it. You consider these questions very carefully.

Addison said he wasn't watching after they got back to the scene, he was looking for a hand. Who had the opportunity to put that gun there if Dennis Williams didn't have it? That is a matter for you to decide. The prosecution is saying more than one person had an opportunity. Lawrence had an opportunity; Byfield had an opportunity."

20. In a helpful passage the Court of Appeal commented on the relevant evidence and on its significance:

> "It is difficult to understand the relevance of that home-made gun to the case. A nexus was never established. It was never identified as belonging to or in the possession of the deceased or any of the persons on trial. Indeed, the shirt in which it was wrapped was not identified with anyone nor was it produced at the trial. There were no proven facts from which an inference could be drawn to place possession of the gun in anyone. Apart from mentioning Lawrence's gun, the appellant Adams did not mention in his statements under caution, which were admitted in evidence, that any other person had a gun. Adams testified that while wrestling with the deceased, he felt 'something in the deceased waist like a gun', and that they moved around and 'it seemed like the gun dropped out of the man's waist.' He so concluded because he said he saw the deceased searching in the bushes. Those bushes we know to be on the opposite side of the road to where Constable Addison said he saw the shirt which contained the home-made gun. Adams did not see the gun at any time and no reasonable inference can be drawn that the gun found near to the deceased's gate wrapped in a shirt long after the incident ended could possibly be what the appellant referred to in his testimony."

As the Court of Appeal went on to show, it appears that it was the judge himself who took a particular interest in the home-made gun and explored with Constable Addison whether he had previously seen that particular gun or one similar to it. Having examined various passages in Constable Addison's evidence, the Court of Appeal concluded:

> "The above evidence makes it plain that it was never established that the home-made gun - Exhibit 6 - was at any time at the police station at Linstead or Spanish Town, or that anyone took it to the scene of the killing. There is absolutely no evidence from which an inference could be drawn that the applicant Lawrence or any of the other policemen 'planted' the firearm at the scene that night. We have concluded, therefore, that the learned judge was in error and misdirected the jury in the manner set forth in the grounds of appeal."

Their Lordships respectfully endorse this conclusion. They

misdirection arising out of these particular passages in the judge's summing-up. It went much deeper since, whatever may have been the origins of the theory that the home-made gun had been planted, as the judge's summing-up shows, that theory had been taken up by counsel for the Crown and formed part of her case as presented to the jury. In this way it became part of the very fabric of the Crown case and of the trial itself.

21. The Court of Appeal went on to consider the application of the proviso and, in doing so, referred in particular to a passage in the opinion of Lord Guest, giving the judgment of the Board in *Anderson v The Queen* [1972] AC 100, 107 C–E:

> "The test which an appeal court is to apply to the proviso was recently referred to by Viscount Dilhorne in *Chung Kum Moey v Public Prosecutor for Singapore* [1967] 2 AC 173, 185 quoting the classic passage by Lord Sankey in *Woolmington v Director of Public Prosecutions* [1935] AC 462, 482–483, whether 'if the jury had been properly directed they would inevitably have come to the same conclusion'. Viscount Dilhorne also referred to *Stirland v Director of Public Prosecutions* [1944] AC 315, 321, where Lord Simon said that the provision assumed 'a situation where a reasonable jury, after being properly directed would, on the evidence properly admissible, without doubt convict.'"

The Court of Appeal also referred to the decision of the Board in *Whittaker v R* (1993) 43 WIR 336, 339d–e, applying the same test in a Jamaican appeal. Having reviewed the evidence against Adams, the Court of Appeal concluded:

> "There was no evidence that the gun 'could well have come from the Linstead Police Station', and that was a misdirection which the learned judge wrongly left for the consideration of the jury. However, it paled into insignificance when viewed in the light of the overwhelming evidence put forward for the prosecution against the appellant, and, in our judgment, no substantial miscarriage of justice has actually occurred. We are satisfied that on the whole of the facts and with a correct direct, the only reasonable and proper verdict would have been one of guilty."

In the case of Lawrence the Court of Appeal described the evidence against him as "overwhelming" and concluded:

> "We are of the view that the misdirection complained of, when looked at in the light of the overall evidence, could only have been an insignificant consideration in the deliberations, with the result that no substantial miscarriage of justice has actually occurred."

22. Their Lordships will always hesitate before interfering with the application of the proviso by a local appeal court which has identified the misdirection and has considered its effect in the context of the evidence led at the trial. In this case, however, they have concluded that it would be right to do so for reasons which can be stated shortly and without repeating the Court of Appeal's account of the evidence against the two appellants. Their Lordships gratefully refer to that account and acknowledge that, as it shows, there was a substantial body of evidence against both appellants. Admittedly, as Mr Thornton contended, some of that evidence was open to possible criticism: for example, the witness Fitzroy Brown accepted that he had made mistakes, while the evidence of Patrick Williams, who was off the island, was led in the form of a deposition and was therefore not susceptible of cross-examination. These are, however, the kinds of matter, going to the weight of the evidence, on which the Board would attach particular importance to the assessment of the Court of Appeal.

23. For another reason, however, their Lordships find themselves unable to say that the jury would "inevitably" have convicted the appellants if the judge had not misdirected them on the matter of the home-made gun. The reason is that the Board attaches particular importance to the assessment of the trial judge himself as to the significance of the inference which he was telling the jury that they could draw from the discovery of the gun. That assessment is at odds with the Court of Appeal's. In a passage which their Lordships have already quoted, the judge told the jury that the whole complexion of the case would change, depending on whether they believed that the gun was planted or believed that the deceased had the gun in his waist. The presiding judge who, unlike the Court of Appeal, had heard the evidence and observed the progress of the trial was there emphasising how central, in his view, this issue would be to the jury's whole approach to the case. As Mr Thornton submitted, the point went to the heart of the case against Adams, since any conclusion that the gun had been planted would entirely undermine his plea of self-defence based on his supposed discovery that the deceased had a gun at his waist which fell to the ground and which the deceased

Lawrence had planted the gun would be entirely inconsistent with his defence that he had merely been acting as a police officer; it would tie him into a scheme to provide a false defence for Adams and so into the killing. Having regard to the importance which the trial judge himself attached to this issue and which he indicated that it would have for the jury, their Lordships cannot say that the jury would inevitably have reached the same verdict if the direction had not been given. In thus differing from the Court of Appeal as to the application of the proviso, the Board also takes into account the irregularities relating to the hearing of the no case to answer submissions and, especially in relation to Adams, relating to the voire dire.

24. For these reasons, since there can be no question of a retrial after all this time, their Lordships will humbly advise Her Majesty that the appeals of both Adams and Lawrence should be allowed and that their convictions should simply be quashed.