Privy Council Appeal No 106 of 2005

Barry Wizzard *Appellant*

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 29th March 2007

Present at the hearing:-

Lord Bingham of Cornhill
Lord Hoffmann
Lord Phillips of Worth Matravers
Lord Carswell
Lord Brown of Eaton-under-Heywood

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*[Delivered by **Lord Phillips of Worth Matravers**]*

1. On 26 January 2000 in the Supreme Court, St Catherine's Circuit, Jamaica, before McKintosh J and a jury, Barry Wizzard, the appellant, was convicted of the capital murder of Mr Howard Bredwood contrary to section 2 (1) (a) of the Offences against the Person Act ('the Act'). He was sentenced to be hanged. He appealed against conviction and his appeal was dismissed by the Court of Appeal on 6 April 2001. He appeals against both conviction and sentence with special leave, granted on 4 July 2005.

The appeal against conviction

2. Section 2 of the Act provides that a murder is a capital murder where, inter alia, the victim is a 'correctional officer' and the murder is 'directly attributable to the nature of his occupation'. The appellant was charged with and found guilty of capital murder on the basis of these provisions.

3. The primary evidence against the appellant consisted of admissions alleged by the prosecution to have been made to the police in a statement under caution ('the statement under caution') that was corroborated by a statement of a Mr Lundy. Mr Cousins, the counsel acting for the appellant at his trial, objected to the admission of the statement under caution and a voir dire was held. The judge ruled that the statement was admissible and it was read to the jury. She directed the jury that they could rely upon the statement under caution provided that they were satisfied that it was true, even if they concluded that it might have been obtained by oppression.

4. Mr Julian Knowles has argued for the appellant that:

(i) The judge erred in admitting the caution statement;

(ii) The judge's direction in relation to the caution statement was defective;

(iii) The judge failed to give the jury an appropriate warning in relation to Mr Lundy's statement;

(iv) The judge failed to give the jury an adequate direction in relation to the elements of capital murder relied upon by the prosecution.

The statement under caution

5. The statement under caution was written by Acting Superintendent Grant ('Inspector Grant') and signed by the appellant on 27 November 1997, the day of his arrest. The statement was recorded phonetically and was in patois. It was to the following effect.

6. On Monday 24 November 1997 the appellant met Nicholas Dawkins ('Nicholas'), Donovan Scott ('Blacka'), and Jason Durrant ('Outlaw') on Jones Avenue. Nicholas pointed out Mr Bredwood and said to the appellant of him:

> "one warder dat live in Larriston deh pon di Avenue and dem bwoy deh fi dead because Larriston man dem always a fight against wi and when we go to prison dat warder always a give wi a fight at Gun Court. "

Nicholas suggested that all four, including the appellant, rush the warder and hold him.

7. All four walked over to Mr Bredwood and grabbed him. Outlaw took a big stick and hit Mr Bredwood on the head. The appellant took out a knife and stabbed Mr Bredwood in both hands. Then all four took him into the 'Race Horse Room, Pal Pal House, on Shit Lane'. There they sat him on the floor, tied his hands behind his back with wire and stuffed a rag in his mouth. They took turns to guard him until nightfall. When night came, Nicholas said that it was time to kill Mr Bredwood, Blacka and the appellant both stabbed him in the chest. Nicholas cut his throat. They wrapped his body in a sheet.

8. Nicholas and Blacka then left to find a taxi driver called 'Natty' to help dispose of the body. Natty arrived with a taxi, the body was lifted into the boot and Nicholas, Blacka, Outlaw and the appellant climbed into the car. Natty was told to drive to Larriston, because the plan was to dump the body there so that it would appear that the murder had been committed by a Larriston man. When they reached a particular spot on the road Nicholas told Natty to stop. They lifted the body out and dumped it in the road. Natty then drove them back to Jones Avenue.

Mr Lundy's statement

9. Mr Lundy went to Spanish Town Police Station on 1 December 1997 and volunteered a statement. He later vanished and police searches failed to disclose his whereabouts. His statement was to the following effect.

10. He lived on Jones Avenue and carried on business as a taxi driver. He was not called Natty but he lived next door to a man with that name. Residents of the area whom he knew included four whom he named as Nicholas, Outlaw, Blacka and Barry. He gave a description of these men. That of Barry was as follows:

> "About five feet six inches tall, of black complexion and of slim build. He has a round face, straight nose and has a little beard on the chin. He has bright eyes and a tooth is missing from the top row of his mouth"

11. On the night of 25 November 1997 some men banged on the door of his next door neighbour, who was called Natty, shouting for a driver. Then there was a banging on his own door. Barry and another man were outside. Barry said that he wanted Mr Lundy to take a brother who was sick to hospital. When they reached the car Nicholas and Outlaw climbed into the back. They drove to Shit Lane. The four men then collected a body from nearby premises and placed it in the boot of the car. Outlaw directed him to drive to Larriston. There the four men left the body in the road. He was then instructed to drive them back to Jones Avenue.

12. The following morning he saw blood in the boot of his car and wiped it clean. He did not report what had happened because he was in fear. On 27 November he told his wife what had happened and they decided that they would move from the area, after which he would report the matter to the police. They moved the following day and he went to the police station to make his statement at about 3 pm on 1 December.

13. Mr Lundy's statement did not tally entirely with the appellant's statement under caution, but it corroborated much of that statement. Furthermore the description that he gave of Barry matched the appearance of the appellant. Objection was taken, unsuccessfully, to the reading of Mr Lundy's statement at the trial and on appeal. That objection was not pursued before their Lordships.

The Voir Dire

14. Before the voir dire took place the following evidence was given by a Sergeant Walker without objection by Mr Cousins.

15. On the morning of 26 November [having regard to the other evidence this date must, in fact, have been the 25 November], acting on information received, Sergeant Walker and other police officers proceeded to Bonanza Drive, Larriston, where they found Mr Bredwood's body. On 27 November, acting on further information received, he went with other policemen to Spanish Town where he arrested the appellant, cautioned him and told him that he was investigating the murder of Mr Bredwood and believed that the appellant could assist. The appellant replied *"Me wi tell you how it goh"*. The appellant confirmed that he wished to

make a statement in writing. Sergeant Walker then escorted him to the police station in Spanish Town.

16. At the police station the appellant was cautioned by Inspector Grant and signed a statement recording that fact. He then signed a request to Inspector Grant to write his statement out for him. He then dictated a statement to Inspector Grant. This was read back to him, whereupon he signed it. No promises or threats were made to him nor violence used upon him.

17. At this point, Mr Cousins objected to the admission of the statement and the voir dire intervened.

18. Both Sergeant Walker and Inspector Grant gave evidence and were cross-examined. Mr Cousins put to them that they had forced the appellant to "give a statement" by beating him and that the statement that he had given was not read back to him. The officers denied this.

19. The appellant was then called to give evidence. He told a significantly different story to the account put to the police officers in cross-examination. He said that Inspector Grant had brought him a piece of paper to sign with writing on it and asked him to sign this. He had refused because he did not know what it was about. He had then been beaten about the head with a piece of board and knocked unconscious. When he recovered his senses, he was pouring blood from a head wound. He was then punched in the face and a tooth was knocked out. He was told that if he did not sign the document he would be killed. In these circumstances he put his signature to the document. It was not read to him.

20. The appellant was cross-examined and asked about some discrepancies between his evidence and what had been put to the police officers in cross-examination. In particular, he was asked about the allegation that the police had knocked out a tooth. At the start of his cross-examination he said that he was already missing two front teeth, but that the police had knocked out a third. At other stages of his evidence what he said as to the number of teeth that were missing before his arrest and the number knocked out by the police was neither clear nor consistent.

21. In submissions to the judge Mr Cousins contended that the appellant's evidence was corroborated by the fact that he had a scar on his head and was missing a tooth. He submitted that the statement under caution should not be admitted. The judge gave a very short ruling:

"Yes, I find that the statement was given voluntarily and it is therefore admitted into evidence".

The challenge to the admission of the statement under caution

22. The submissions made by Mr Knowles to their Lordships echoed those made to the judge by Mr Cousins. He submitted that the appellant's evidence of his treatment by the police was corroborated by the scar on his head and his missing tooth. He further submitted that the judge's ruling was open to objection in that she gave no reasons for her decision.

23. There are two problems with Mr Knowles' submissions, as there were with those of Mr Cousins. The first is that there was no satisfactory evidence that the scar on the appellant's head and one of his missing teeth were consequences of being beaten by the police. The second, and more fundamental problem, is that the appellant's story that he had been forced to put his signature to a statement that had been prepared without input from himself was not credible. It must have been apparent to the judge, as it has been to their Lordships, that the statement under caution must almost certainly have been provided by the appellant from facts within his own knowledge. No suggestion was made to the judge, or to their Lordships, as to how Inspector Grant could, on 27 November, have included in a fabricated statement the details that were subsequently to be corroborated by the statement provided by Mr Lundy.

24. For these reasons, their Lordships have concluded that the judge had good reason to reject the appellant's evidence on the voir dire and that her short and simple ruling was all that, in the circumstances, she needed to say.

The direction to the jury in relation to the statement under caution

25. The appellant did not give evidence under oath but made an unsworn statement from the dock. This was similar in effect to the evidence that he had given on the voir dire. His statement dealt only with the circumstances in which the statement under caution had been prepared and signed. It did not include a denial of involvement in the murder. The judge accurately directed the jury that "the prosecution's case relies almost entirely on the caution statement given by the accused". She reminded the jury of the conflicting evidence in relation to this document. She then said this:

> "If, for whatever reason, you are not sure whether the statement was made or was true, then you must disregard it. If, on the other hand, you are sure both that it was made and that it was true, you may rely on it even if it was made or may have been made as a result of oppression or other improper circumstances."

26. The most significant ground of appeal advanced by Mr Knowles relates to this direction. At the time that it was given by the judge it must have appeared unexceptionable. Indeed it was one of the specimen directions published by this country's Judicial Studies Board. That specimen direction reflected the approach laid down by this Board in *Chan Wei Keung v The Queen* [1967] 2 AC 160. In *R v Mushtaq* [2005] UKHL 25; [2005] 1 WLR 1513, however, the House of Lords disapproved that direction. It held that the jury should be directed to disregard a confession if they conclude that it was, or may have been, obtained by oppression. Mr Knowles submitted that McIntosh J should have given such a direction to the jury rather than the direction quoted above.

27. On behalf of the respondent, Mr James Guthrie QC made the following submissions:

(i) The decision in *Mushtaq* does not apply on the facts of this case.

(ii) The decision in *Mushtaq* is not applicable in Jamaica.

(iii) The decision in *Mushtaq* should not be applied retroactively.

(iv) If necessary, this is a proper case for the application of the proviso to section 13 (1) of the Judicature (Appellate Jurisdiction) Act.

The first three submissions call for an analysis of the decision in *Mushtaq.*

R v Mushtaq

28. In *Mushtaq* the appellant was convicted of conspiracy to defraud. He had made a statement to the police containing damaging admissions and had unsuccessfully sought to exclude this on a voir dire on the ground that it had been induced by oppression. The alleged oppression was not physical violence or the threat of this, but a refusal to permit him to visit his wife, who was seriously ill in hospital, unless he made the admissions. These allegations were put to the police

when they gave evidence before the jury and they denied them. The defendant did not give evidence.

29. In summing up to the jury, the judge first observed that the fact that the defendant had made the admissions was not challenged. He then referred to the allegations of oppression that had been put to, and denied by, the police officers and to the fact that no evidence had been called to support those allegations. He then continued:

> "If you are not sure, for whatever reason, that the confession is true, you must disregard it. If, on the other hand, you are sure that it is true, you may rely on it even if it was, or may have been made as a result of oppression or other improper circumstances."

Thus he gave the same direction as that given by McIntosh J in the present case.

30. After an unsuccessful appeal to the Court of Appeal, Mr Mushtaq appealed to the House of Lords. He argued that the judge's direction was at odds both with section 76(2) of the Police and Criminal Evidence Act 1984 ('PACE') and with article 6 (1) of the European Convention on Human Rights ('ECHR'). This submission succeeded. Lord Rodger gave the leading speech, with which Lord Steyn and Lord Phillips of Worth Matravers agreed.

31. Lord Rodger observed:

> "36. The point of principle raised by the certified question and argued before the House is indeed of general importance. But I cannot help noticing at the outset that, since the appellant did not give evidence and the police officers denied all the suggestions of oppressive behaviour in conducting the interview that were put to them in cross-examination, it appears that there was actually no evidence of oppression before the jury. If that was indeed the position, there was no need for the judge to give any direction on what the jury should do if they found that there was, or might have been, oppression...Since, however, the question of law has been fully argued, the House should deal with it."

32. Dealing with the issue of principle, Lord Rodger said:

"47. In my view, therefore the logic of section 76(2) of PACE really requires that the jury should be directed that, if they consider the confession was, or may have been, obtained by oppression or in consequence of anything said or done which was likely to render it unreliable, they should disregard it. In giving effect to the policy of Parliament in this way, your Lordships are merely reverting to the approach laid down by the Court of Criminal Appeal (Lord Goddard CJ, Byrne and Parker JJ) in *R v Bass* [1953] 1 QB 680. Giving the judgment of the court, Byrne J quoted the well-known words of Lord Sumner in *Ibrahim v The King* [1914 AC] 599, 609-610:

'It has been established as a positive rule of English criminal law that no statement by an accused in admissible in evidence against him unless it is shown by the prosecution to have been a voluntary statement, in the sense that it has not been obtained from him either by fear of prejudice or hope of advantage exercised or held out by a person in authority. The principle is as old as Lord Hale.'

He then added, at p. 684:

'It is to be observed, as the court pointed out in *R v Murray* [1951] 1 KB 391, that while it is for the presiding judge to rule whether a statement is admissible, it is for the jury to determine the weight to be given to it if he admits it, and thus, when a statement has been admitted by the judge, he should direct the jury to apply to their consideration of it the principle as stated by Lord Sumner, and he should further tell them that if they are not satisfied that it was made voluntarily, they should give it no weight at all and disregard it.'

It seems clear that the court saw the direction to disregard the confession in such circumstances as part and parcel of the jury's exercise of attributing the appropriate weight to the confession: in circumstances where they found that it had not been voluntary, for reasons going back to the time of Lord Hale, they should give it no weight and should disregard it"

33. Lord Rodger went on to observe that the same result was required by article 6 of the ECHR. He held:

> "53. In terms of section 6 (1) of the 1998 Act it is therefore unlawful for the judge and jury to act in a way which is incompatible with a defendant's right against self-incrimination as implied into article 6 (1). Here the judge directed the jury that, if they were sure that the appellant's confession was true, they might rely on it, 'even if it was, or may have been, made as a result of oppression or other improper circumstances'. This was a direction that, in reaching their verdict and so, for article 6 (1) purposes, determining the criminal charges against the appellant, the jury were entitled to take into account a confession which they considered was, or might have been, obtained by oppression or any other improper means in violation of his right against self-incrimination. Such a direction was an invitation to the jury to act in a way that was incompatible with the appellant's right against self-incrimination under article 6 (1). As such, the direction was itself incompatible with that right.
>
> 54. It follows, both on the basis of section 76 (2) when viewed without regard to the Convention and on the basis of the appellant's article 6 (1) Convention right against self-incrimination, that the judge misdirected the jury when he said that, if they were sure that the confession was true, they might rely on it, even if it was, or might have been made as a result of oppression or other improper circumstances"

34. Lord Carswell agreed that the judge had given a misdirection, but for somewhat different reasons. He held that the position at common law was correctly stated in *R v Bass*, citing the same passage as had Lord Rodger. He did not accept that section 76(2) of PACE had the effect identified by Lord Rodger. He agreed, however, with Lord Rodger's view of the effect of article 6(1) of the ECHR, when read with section 6 of the Human Rights Act 1998. This led him to the following conclusion:

> "75. I therefore consider that the judge should direct the jury in more prescriptive terms than the *Bass* direction, to the effect that unless they are satisfied beyond reasonable doubt that the confession was not obtained as a result of oppression, they must disregard it".

Was a *Mushtaq* direction required on the facts of the present case?

35. A *Mushtaq* direction is only required where there is a possibility that the jury may conclude (i) that a statement was made by the defendant, (ii) the statement was true but (iii) the statement was, or may have been, induced by oppression. In the present case there was no basis upon which the jury could have reached these conclusions. The issue raised by the appellant's statement from the dock was not whether his statement under caution had been induced by violence but whether he had ever made that statement at all. The statement bore his signature. His evidence was that his signature was obtained by violence. This raised an issue that was secondary, albeit highly relevant, to the primary issue of whether he had made the statement. His case was that he had not made the statement, nor even known what was in the document to which he was forced to put his signature. In these circumstances there was no need for the judge to give the jury a direction that presupposed that the jury might conclude that the appellant had made the statement but had been induced to do so by violence.

36. Mr Knowles argued that, despite the terms of the appellant's statement from the dock, it would have been open to the jury to conclude that his statement under caution had been forced out of him by violence and that it was correct for the judge to give a direction that catered for that possibility. Their Lordships do not agree. The fact remains that the judge did give a direction that catered for that possibility, but catered for it in a manner that was inappropriate. The appropriate direction (had there been evidence that the statement under caution had been forced out of the appellant by violence) would have been a *Mushtaq* direction. The fact that she gave an inappropriate direction in a situation where no direction was called for at all cannot have affected the safety of the jury's verdict.

Does *Mushtaq* apply in Jamaica?

37. Mr Guthrie submitted that the position at common law was correctly stated in *Chan Wei Keung v The Queen*. *Mushtaq* was a departure from the common law consequent upon the effect, within the jurisdiction of England and Wales, of section 76 (2) of PACE and section 6 of the Human Rights Act. It followed that *Mushtaq* was not applicable in Jamaica. Their Lordships do not agree. The relevant principle derived both from section 76 (2) of PACE and article 6 of the ECHR is the principle against self-incrimination. That is a long recognised principle of the common law. The approach in *R v Bass* accorded with that principle. The approach in *Chan Wei Keung v The Queen* did not. The latter decision was a false step in the development of the common law. *Mushtaq* has re-established the correct approach and is, in consequence, applicable in Jamaica.

38. Mr Knowles sought to buttress his reliance on *Mushtaq* by submitting that in the present case the oppression relied upon amounted to torture, so that for this additional reason the statement under caution could not be given any weight by the jury – see *A v Secretary of State for the Home Department (No.2)* [2005] UKHL 71;[2006] 2 AC 221. Where there is a possibility that self-incrimination may have been procured by torture, a *Mushtaq* direction is particularly important. *A v Secretary of State* is not, however, directly applicable to such a situation. That case dealt with evidence obtained from third parties. The decision of the majority of the House in relation to burden of proof has no application to a case of self-incrimination.

Should the decision in *Mushtaq* be applied retroactively?

39. Mr Guthrie raised the question of whether it was right for the decision in *Mushtaq* to be applied, on appeal, to a summing up that pre-dated that decision. The answer is that, because *Mushtaq* was declaratory of the common law, it can be relied upon in appeals in relation to cases that predated the decision. This does not mean that permission to appeal should be given in any case in which a judge has erroneously given the direction given by the judge in the present case. The *Mushtaq* direction addresses an unlikely state of affairs, namely that, although the judge on the voir dire has been satisfied that admissions were not obtained by oppression, the jury may not be of the same mind. Permission to appeal should not be given in a case such as the present unless there is reason to believe that the jury might have reached a different conclusion to that of the judge on the voir dire. *Mushtaq* was a case where, on analysis, the evidence laid no foundation for a conclusion by the jury that the defendant's admissions had been obtained by oppression, so the issue of the appropriate direction was academic. The same has proved to be true of the present case.

The application of the proviso

40. Their Lordships have concluded that, while the direction given by the judge in relation to the statement under caution was defective, it was unnecessary and cannot have misled the jury. What follows from this? Section 14 of the Judicature (Appellate Jurisdiction) Act provides:

> "(1) The Court on any such appeal against conviction shall allow the appeal if they think that the verdict of the jury should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence or that the judgment of the court before which

> the appellant was convicted should be set aside on the ground of a wrong decision of any question of law, or that on any ground there was a miscarriage of justice, and in any other case shall dismiss the appeal:
>
> Provided that the Court may, notwithstanding that they are of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if they consider that no substantial miscarriage of justice has actually occurred."

Had the misdirection been material, the basis upon which it might have been right to allow this appeal would have been that there had been a 'miscarriage of justice'. In the event, there has been no miscarriage of justice. It is thus a moot point as to whether one ever reaches the proviso. If one does, then the proviso clearly applies.

Mr Lundy's statement

41. Mr Knowles advanced three submissions in relation to Mr Lundy's statement:

(i) The judge should have given a *Turnbull* [1977] QB 224 warning in relation to Mr Lundy;

(ii) The judge should have pointed out to the jury that there had been no identification by Mr Lundy of the appellant;

(iii) The judge should have warned the jury that, because Mr Lundy had not been cross-examined, they should treat his evidence with caution.

42. The first two points are mutually contradictory. A *Turnbull* direction is only appropriate where a witness has purported to identify the defendant. In this case Mr Lundy did not do so. He gave a description that fitted the appellant, but this fact did not call for a *Turnbull* direction. Nor was there any requirement for the judge to point out that Mr Lundy had not identified the appellant. There was never any suggestion that he had.

43. As to the third point, the judge said this, after she had explained why it had proved impossible to call Mr Lundy to give evidence:

> "...what you have is a statement from Mr Lundy given to the police. Mr Lundy was not here, he could not be cross-examined. His evidence could not be tested. And what you have to do is to attach the amount of weight that you think ought to give the statement which you have heard, bearing in mind that it is not sworn evidence and it was not tested by cross-examination. You have to look at it, consider it, and attach such weight to it as you think you should."

It seems to their Lordships that this was an impeccable direction.

The elements of capital murder

44. The final points to be considered in relation to the appeal against conviction relate to the issue of whether the appellant was properly convicted of capital murder. For reasons which their Lordships will explain when they address the appeal against sentence, it is now common ground that the appellant is no longer at risk of being hanged. He has to be re-sentenced. The question of whether or not he committed capital murder affects the powers of the court on re-sentencing.

45. The relevant section of the Offences against the Person Act reads:

> "2. (1) Subject to subsection (2), murder committed in the following circumstances is capital murder, that is to say –(a) the murder of –
>
> (i) a member of the security forces acting in the execution of his duties or of a person assisting a member so acting;
>
> (ii) a correctional officer acting in the execution of his duties or of a person assisting a correctional officer so acting;
>
> (iii) a judicial officer acting in the execution of his duties; or
>
> (iv) any person acting in the execution of his duties, being a person who, for the purpose of carrying out those duties, is vested under the provisions of any law in force for the time being with the same powers, authorities and privileges as are given by law to members of the Jamaica Constabulary Force, or the murder of any such member of the security forces, correctional officer,

judicial officer or person for any reason directly attributable to the nature of his occupation."

...

(5) In this section –
"correctional officer" has the same meaning as in the Corrections Act.

46. Section 2 of the Corrections Act in so far as material reads:

"correctional officer"-

"(a) in relation to an adult correctional centre, means the Commissioner and any officer subordinate to him, other than such officers as may be prescribed, carrying out functions in, or in relation to, an adult correctional centre; and
(b) in relation to any other correctional institution, means the Commissioner and such other persons as may be prescribed as a correctional officer in relation to that institution."

47. The judge gave the following directions in the early part of her summing-up:

"In this instance of capital murder the prosecution must prove to you that the deceased, Howard Bredwood, was killed by virtue of the fact that he was a correctional officer."

In her final charge to the jury the Judge said:

"If, as I said before, you are satisfied from the evidence that Mr. Howard Bredwood was killed because he was a correctional officer, then it would be open to you to convict this accused of capital murder. If, however, you find that the accused killed or took part in the killing but you are not sure whether Mr Bredwood was killed because he was a correctional officer, or because he was a man from the Larriston area, that always fighting against them, as was disclosed in the caution statement; if you are not sure about it, then it is open to you to convict the accused of the lesser offence of non-capital murder. So, those are the two verdicts you can give. Guilty of capital murder or in the circumstances that I have related guilty of murder or you can find that

> he is guilty of nothing at all. It depends entirely on what you make of the evidence and what you decide. So, please retire and consider your verdict."

48. Mr Knowles submitted that these directions were inadequate in that (i) they failed adequately to direct the jury in relation to the issue of whether the appellant was a correctional officer and (ii) they failed adequately to direct the jury in relation to the issue of whether the appellant killed Mr Bredwood for "a reason directly attributable to the nature of his occupation" as a correctional officer.

49. As to the first point it does not appear to their Lordships that there was ever any issue as to whether Mr Bredwood was a correctional officer. There was cogent evidence that he was and no evidence to the contrary.

50. The definition of correctional officers in section 2 of the Corrections Act provides limited assistance as to the general nature of the office. The Judgment of the Court of Appeal records, however, that "warder" is the traditional description of a "correctional officer". It follows that the appellant's statement under caution itself provided evidence that Mr Bredwood was a correctional officer. There was, however, more evidence than this. Miss Elaine Thompson, who lived with Mr Bredwood and was the mother of his child, was called to give evidence. She said that before his death he was working as a correctional officer. She was not cross-examined. Mr Kenneth Gibbons, Mr Bredwood's brother in law, was also called to give evidence. He said that Mr Bredwood worked with the Correctional Service training prison warders at Runaway Bay. This evidence was not challenged.

51. In these circumstances no criticism could be made of the judge in approaching her summing up on the basis that it was common ground that the murdered man was a correctional officer. What of the requirement that the murder should be committed "for any reason directly attributable to the nature of his occupation"? Their Lordships do not consider that the judge could have put the issue any more clearly before the jury than by directing them as she did that to be convicted of capital murder they had to be satisfied that Mr Bredwood was killed because he was a correctional officer. The Court of Appeal took the same view.

52. It follows that all the grounds of appeal against conviction fail and that their Lordships will humbly advise Her Majesty that the appellant's appeal against conviction must be dismissed.

The appeal against sentence

53. At the time of the appellant's conviction section 3 of the Offences against the Person Act provided:

> "(1) Every person who is convicted of capital murder shall be sentenced to death and upon every such conviction the court shall pronounce sentence of death, and the same may be carried into execution as heretofore has been the practice."

The appellant was duly sentenced to death pursuant to this section upon his conviction.

54. In *Watson v The Queen* [2004] UKPC 34: [2005] 1AC 472, their Lordships' Board held that mandatory sentences of death in Jamaica were unconstitutional. In consequence of that ruling section 3 of the Act has been amended so as to delete sub-section (1) and substitute:

> "(1) Every person who is convicted of murder falling within –
>
> (a) section (2) (1) (a) to (f)...shall be sentenced to death or to imprisonment for life;"

55. Mr Guthrie accepted that the appeal against sentence must be allowed and the sentence to death by hanging quashed. He also accepted that, were the appellant to be re-sentenced in accordance with section 3 of the Act, as amended, the appellant would inevitably be sentenced to life imprisonment. Having regard to the length of time which has elapsed since the appellant was sentenced, the decision of their Lordship's Board in *Pratt v Attorney-General for Jamaica* [1994] 2 AC 1 would preclude the imposition of the death penalty.

56. In these circumstances the appropriate course will be for their Lordships humbly to advise Her Majesty that the appeal against sentence should be allowed and the sentence of death by hanging commuted to a sentence of life imprisonment.