[2007] **CCJ 2 (AJ)**

IN THE CARIBBEAN COURT OF JUSTICE

Appellate Jurisdiction

ON APPEAL FROM THE COURT OF APPEAL OF GUYANA

CCJ Appeal No CR 3 of 2006

BETWEEN

VAUGHN THOMAS **APPELLANT**

AND

THE STATE **RESPONDENT**

Before The Rt Honourable	**Mr Justice de la Bastide, President**
And The Honourables	**Mr Justice Nelson**
	Mr Justice Saunders
	Madame Justice Bernard
	Mr Justice Wit

Appearances

Mr C A Nigel Hughes, Mr Roger Yearwood and Mr Sean Cazabon for the Appellant

Ms Jo-Ann Barlow and Ms Candace Raphael for the Respondent

JUDGMENT
Delivered by

The Hon Mr Justice Michael de la Bastide

on the 4th day of April, 2007

J U D G M E N T

INTRODUCTION

[1] The appellant was convicted of buggery committed on a 14-year old boy on the 27th March, 1999, and was sentenced to 10 years' imprisonment. He was also charged in relation to the same incident with common assault and was found guilty of that offence as well, but no penalty was imposed for it. The appellant's appeal to the Court of Appeal was dismissed. He then sought and obtained from this Court special leave to appeal his convictions. His appeal was heard by us on the 27th July, 2006, and at the conclusion of the hearing we allowed the appeal and quashed the convictions and sentence. We promised then that we would give our reasons in writing later and we now proceed to do so.

UNDISPUTED FACTS

[2] Much of the prosecution's case was not disputed. The virtual complainant, a boy who was nearly 15 at the time of the offence, gave evidence that on the 27th March, 1999, at about 7 p.m. he was running in a southerly direction on the western side of the main road which leads to the airport on the East bank of the Demerara River. He had just left his mother at her work-place at Rambarran's compound and was headed for his home in a village known as land of Canaan. He had taken off his shirt because he was feeling hot and had it slung over his shoulder. A police car painted in distinctive blue and white stripes which was travelling in a northerly direction, pulled up alongside him. The driver was a policeman in uniform. He was the only person in the car. He asked the virtual complainant what he was doing out so late without a shirt. He then got out of the car, searched the virtual complainant by 'patting him down' and ordered him to get into the car. The virtual complainant did as he was told and the policeman then drove off with him in the vehicle. The policeman eventually drove to a lonely spot near land of Canaan, where he proceeded forcibly to sodomize him. The policeman spreadeagled the virtual complainant on his belly first in the front and then in the back seat and penetrated him anally in both positions. Later the policeman dropped the virtual complainant off at the side of the road. From there the virtual complainant walked back to his mother's work-place and told her what had befallen him.

[3] Eventually, both his parents took him to the Ruimveldt Police Station where a report was made. He was interviewed at that station by Assistant Superintendent Lawrence who then left with Sgt. Hinds and went to Grove Police Station where the appellant was stationed. ASP Lawrence there

confronted the appellant with the allegation that he had buggered the virtual complainant.

[4] The virtual complainant was examined on the 28th March, at the Public Hospital in Georgetown, and the findings of the doctor confirmed his account of having been forcibly buggered. On an identification parade held on the 29th March, 1999, the virtual complainant identified the appellant as the person who had buggered him.

[5] None of these facts which I have so far stated, was challenged by the appellant at any stage of these proceedings. The issue therefore, was not whether the offences charged had been committed but whether they had been committed by the appellant. The evidence on which the prosecution relied in order to establish the appellant's guilt, was comprised of three parts.

PROSECUTION'S CASE - (1) Circumstantial evidence

[6] First, there was a body of circumstantial evidence which pointed to the appellant having committed the offences. It was common ground that on the night in question the appellant had left the Grove Police Station with another policeman, Sgt. Andrew Gibson, in a police-car PFF-6669, painted distinctively in blue and white stripes. That car was driven from Grove Police Station in a southerly direction along the airport road on the East bank of the Demerara River to Sgt. Gibson's home in land of Canaan, where Gibson was dropped off. The appellant (who was in uniform) then drove the police-car back to Grove Police Station along the same road. In the course of his return to the station, therefore, the appellant would have driven past the point on that road at which the virtual complainant was picked up by the unaccompanied police officer who subsequently raped him.

[7] There was a discrepancy as to time, however, between the evidence of the virtual complainant and his mother on the one hand, and that of the police witnesses on the other, which will be explored later in greater detail.

There was also evidence of a number of other police cars having been in the area that night performing escort or traffic duties in connection with the scheduled departure of the President of Guyana from the airport.

[8] Further, there was evidence from a police officer, Cpl. Gravesande, that at about 9 a.m. on the 28th March, 1999, he found a perfume bottle containing a small amount of liquid in a pocket behind the driver's seat in motor-car PFF-6669. Another police officer, Inspector Deonarine, who put this bottle

into evidence at the preliminary inquiry, testified that the liquid in the bottle was blue in colour and smelled of perfume. The evidence of the virtual complainant was that the policeman who raped him took "a blue perfume bottle" from between the two front seats and sprayed the car. Perfume bottles were not part of a general issue to police cars.

[9] Finally, there was the fact that the appellant's physical appearance corresponded with the rather rudimentary description given by the virtual complainant of his assailant i.e. that he had 'a low cut' (a reference to his hair-cut), a round face and 'big built' (sic). One can safely infer from the failure of the appellant's counsel to draw attention to any discrepancy between that description and his client's physical appearance, that there was none.

PROSECUTION'S CASE – (2) Identification Parade

[10] The second limb of the prosecution's case was the identification of the appellant by the virtual complainant as the man who raped him, when the appellant was placed on an identification parade at the Brickdam Police Station on the 29th March, 1999. For reasons which will be examined later in this judgment, this parade was with justification described by the trial Judge in his summing-up as 'virtually useless'.

PROSECUTION'S CASE – (3) Oral Confession

[11] The third limb of the evidence against the appellant was an oral confession which ASP Lawrence testified the appellant made to him. Lawrence died before the trial and accordingly the deposition which he gave at the preliminary enquiry, was put into evidence at the trial.

[12] ASP Lawrence first received a report of the sexual assault on the virtual complainant while at the Brickdam Police Station at about 12:45 a.m. on the 28th March, 1999. After interviewing the virtual complainant at the Ruimveldt police station, he and Sgt. Hinds proceeded to the Grove Police Station. He there told the appellant that it was alleged that he had buggered the virtual complainant, and cautioned him. The appellant said he was going to tell him the truth and took him alone into the Traffic Office. There, Lawrence said, he cautioned him a second time, whereupon the appellant told Lawrence that after dropping Sgt. Gibson at his home, he had seen a "youth man" who gave him a "lil flingings" and "I dig he in". In reply to Lawrence's query, the appellant confirmed that that meant that he had buggered the young man. Lawrence then took the appellant back into the Enquiries Office where they had left Sgt. Hinds, and asked him to repeat in Hinds' presence what he had just told him. This the appellant

proceeded to do, but the appellant refused to have a written record made of what he had said. Immediately thereafter Lawrence made a note in the Station Diary of what had taken place. According to Lawrence, he then arrested the accused and took him to Brickdam where he was placed in custody.

[13] At the trial, the appellant made an unsworn statement from the dock in which he denied having made the alleged or any oral admission to Lawrence. He said that he and Sgt. Hinds fetched Sgt. Gibson from his home so that the station could be handed over to Gibson. He further claimed that he was placed under close arrest after he had accompanied ASP Lawrence and Sgt. Hinds to Brickdam Police Station. He also stated that he had been taken later to the Georgetown Public Hospital to be medically examined.

GROUNDS OF APPEAL

[14] In the notice of appeal that was filed in this Court, a large number of grounds were pleaded, but counsel for the appellant, Mr. Hughes, in his oral submissions to us, focused on just a few of these grounds. From the outset it appeared to us that there was one ground of appeal which had merit and after hearing argument on it from both sides, we were satisfied that the appeal must be allowed on that ground. It was that the Judge misdirected the jury in dealing with the issue of whether the appellant had in fact made the self-inculpatory statement alleged by Lawrence, by suggesting to them that Lawrence's action in arresting the appellant before he had been identified by the virtual complainant, was consistent, and consistent only, with the appellant having made the contested admission. The grounds of appeal pleaded targeted the judgment of the Court of Appeal rather than the summing-up, although the fate of the appeal depended on the soundness of the summing-up rather than the Court of Appeal's judgment. Be that as it may, the substance of the ground which led us to allow this appeal was captured in the following two grounds, (b) and (c) respectively, in the notice of appeal:

> *"(b) A grave miscarriage of justice was occasioned when the Court of Appeal found that the Learned Trial Judge's directions that the arrest of the Appellant by Ast. Supt. Lawrence meant that the Appellant had confessed, did not result in prejudice to the Appellant.*
>
> *(c) The Court of Appeal erred in law when it found that the omission of the Learned Trial Judge to instruct the jury that the*

arrest of the Appellant did not necessarily mean that the Appellant had made some inculpatory statement or confession … did not result in a miscarriage of justice."

THE MATERIAL MISDIRECTION

[15] There were no less than four passages in the course of the summing-up in which the learned trial Judge suggested very strongly to the jury that they could infer from Lawrence's action in arresting the appellant prior to his identification by the virtual complainant, that the appellant must have made the admission of guilt which Lawrence claimed he had made. In the first passage the Judge begins by suggesting that this is not just a case of Lawrence's word against the appellant's. The reason why it is not word against word is because of Lawrence's subsequent actions. The Judge goes on:

> *"The question is, therefore, why did ASP. Lawrence cause a Lance Cpl. of the Guyana Police Force to be put under close arrest, he had to have had a basis for doing that. You are, therefore, to consider what was the basis for him putting the Lance Cpl. under close arrest. Was it some[thing] that came out of his own mouth that caused the senior Officer to put him under close arrest? … So why would Lawrence have taken this grave step of putting a Lance Cpl. under close arrest? Was it because he had incriminated himself out of his own mouth?"*

[16] A few pages later, after commenting caustically on the evidence of identification, the learned trial Judge told the jury:

> *"You are left with an alleged admission to ASP. Lawrence … It was not just an admission, which he is doubting, but an admission followed by a close arrest, removal from duty in uniform, bringing of somebody else to relieve him from duty, getting him medically examined according to him."*

[17] Just before the learned Judge took a break in his summing-up he returned to the question of the circumstances in which the jury might convict if they rejected the evidence of identification. It was in this context that he said to the jury:

> *"Did he make an admission to ASP. Lawrence, why did ASP Lawrence arrest him, put him under close arrest, relieve him of his duties, bring him to Brickdam and according to him, he was*

sent for a Medical. Was it because of what you might find to be his oral confession?"

[18] Later in the summing-up, in dealing with the case for the defence, the learned Judge again suggested to the jury that they should ask themselves why was the appellant placed under close arrest and why was he taken to the hospital for examination – "*What was the basis for all of that, when he was a Lance Cpl. at the time*".

[19] The inference which the Judge was inviting the jury to draw from the arrest of the appellant at the particular juncture at which that occurred, was not one which could logically or legitimately be drawn. The facts did not support it. Certainly, there were other inferences more favourable to the accused which were equally consistent with his being arrested when he was. The lack of support for the inference which the Judge kept inviting the jury to draw, becomes very obvious when one examines the evidence more closely.

[20] First of all, when Lawrence went to Grove Police Station, he already had certain information the nature of which was not disclosed in evidence, probably because it was hearsay and therefore inadmissible. According to his evidence, he received "certain information" first of all while he was at Brickdam. He then interviewed the virtual complainant at Ruimveldt Police Station and got from him what I have described as a rudimentary description of his attacker. The virtual complainant also told him that the perpetrator wore what were described as 'day/night glasses' which had yellow lenses. No evidence was given that the appellant wore or had in his possession glasses of this description, but on the other hand there was no evidence to the contrary either, so we do not know whether in Lawrence's mind this bit of information was of any significance. According to Lawrence, before he and Sgt. Hinds left Ruimveldt for Grove Police Station, he received 'further information'. Again, it was not disclosed what this further information was.

[21] There was also some other highly relevant evidence given by the virtual complainant. Under cross-examination he said:

> *"The police they were going to arrest the man after I gave description … the police at Ruimveldt said it was a black officer".*

Later on in his cross-examination he said:

> *"Mr. Robbie and Mr. Gravesande took my statements. Robbie was the one who said he was going to arrest the man".*

It is clear from the context that the police officer referred to as 'Robbie' was in fact ASP. Lawrence.

[22] If this evidence was accepted, and there was no reason why it should not have been, then it was obvious that when Lawrence left the Ruimveldt Police Station, he left with the intention of arresting the appellant, regardless of how he responded when told of the allegation against him.

[23] The issue whether the self-incriminatory statement was made by the appellant, was a crucial one, particularly in the context of the summing-up. As already indicated, the Judge was highly critical of the evidence of identification. He described the identification parade as 'virtually useless' and emphasised to the jury the difficult conditions under which the virtual complainant's observation of his assailant was made. So far as the identification parade was concerned, it bore every sign of having been conducted (as indeed it was) by a police officer who had never conducted an identification parade before. All the persons on the parade apart from the appellant were prisoners, and therefore it was not surprising that he was the only one who was neatly dressed. Moreover, the police officer in charge of the parade told the virtual complainant before he viewed the parade, that the suspect was on it.

[24] So far as the virtual complainant's observation of his assailant was concerned, the only opportunity he had to see the man's face was when it was illumined by the lights of an oncoming vehicle. That gave him a side view for what must have been a couple of seconds at most.

[25] Given the way in which the case was summed up to them, we are inclined to agree with the Court of Appeal that the jury could not have convicted the appellant unless they accepted Lawrence's evidence of the oral admission made to him by the appellant. The misdirection as to the significance of the appellant's arrest, therefore, related to a crucial issue in the case. Moreover, the misdirection was likely to have had a powerful influence on the way in which the jury resolved that issue. It is true that the appellant's denial was not made on oath from the witness-box but in an unsworn statement from the dock. On the other hand, the jury were warned that they had been denied the advantage of seeing and hearing Lawrence giving his evidence and being cross-examined on it. Further, the defence were able to make the point that although the inculpatory statement was alleged to have been repeated in the presence and hearing of Sgt. Hinds, he was not called as a witness at the preliminary inquiry and no steps were taken after Lawrence's death to have him give evidence at the trial. No explanation or excuse was given for this. The Judge in summing-up said it would have

been 'better' if Hinds had been called. The Court of Appeal said that the failure to call him neither strengthened nor weakened the case for the prosecution. We do not agree. We think it was a matter which the jury would have been entitled to take into account in the absence of an explanation and which might reasonably have led them to adopt a more cautious approach to Lawrence's evidence.

[26] In the circumstances, this misdirection by the Judge as to the inference to be drawn from the appellant's arrest was very important. The Court of Appeal would only go so far as to say that it was 'perhaps desirable' that the Judge should have pointed out to the jury that the arrest did not necessarily mean that a self-inculpatory statement had been made. But the Court of Appeal seemed to consider that the effect of the Judge's omission to point that out, was somehow blunted by the fact that on their interpretation of Lawrence's evidence, he asserted that it was because of that self-inculpatory statement that he arrested the appellant. We do not accept that Lawrence's evidence is capable of that interpretation, but even if it were, that would increase, rather than reduce, the damage caused by wrongly suggesting to the jury that the arrest of the appellant was only explainable on the footing that he had admitted his guilt. We do not agree with the Court of Appeal that there was any mitigation of the damage caused by this misdirection.

[27] Ms. Barlow, counsel for the State, did not seek to support the inference which the Judge invited the jury to draw from the appellant's arrest, but she argued that the 'disadvantage' of this misdirection was cured by other directions given by the Judge in the course of his summing-up with regard to such matters as the burden and standard of proof, the presumption of innocence and the principles governing the drawing of inferences. We do not agree that these general directions counteracted or blunted the effect of a specific misdirection which was forcefully and repeatedly given.

[28] For all these reasons, therefore, we hold that there was a material misdirection on a central issue which would prima facie amount to a miscarriage of justice within the meaning of section 13(1) of the Court of Appeal Act. The only basis therefore, on which the convictions could be saved was if the proviso to section 13(1) could be applied on the ground that even if the jury had been properly directed, they would inevitably have rendered the same 'guilty' verdict so that at the end of the day no substantial miscarriage of justice had in fact occurred. This was the course which was taken by the Court of Appeal and which Ms. Barlow urged us to adopt.

CAN THE PROVISO BE APPLIED?

[29] For the purpose of determining the applicability of the proviso, therefore, it is necessary to consider whether the rest of the prosecution's evidence would inevitably have led a properly directed jury to convict. We have already said enough to indicate why in our view, assuming there was no misdirection by the Judge, a jury would not necessarily have found that the appellant had orally admitted his guilt, as alleged by ASP. Lawrence in his deposition. Of the other two limbs of the prosecution's case, the only one that merits consideration in this context is the circumstantial evidence linking the appellant to the crime. We do not consider that the identification of the appellant by the virtual complainant on the occasion of the identification parade at the Brickdam Police Station, had any probative value whatever. The whole exercise was vitiated, firstly by the appellant being told in advance that the suspect would be in the line-up, and secondly because the appellant would have stood out like a sore thumb from the others who were all shabbily dressed prisoners. We also have in mind the very limited opportunity which the virtual complainant had to observe his assailant and the very stressful and difficult conditions under which that observation took place. We have no doubt that if the case against the appellant had rested solely or even substantially on the evidence of visual identification by the virtual complainant, the Judge would have been obliged to direct the jury to acquit.

[30] The real question, therefore, is how compelling was the circumstantial evidence linking the appellant to the crime. Is there undisputed evidence of a combination of circumstances which points so inexorably to the appellant being the person who abducted and raped the virtual complainant, that it would be contrary to reason to explain them away as mere coincidences? More specifically, is it credible that there was another police officer who:

(a) while in uniform but unaccompanied, drove a police car in a northerly direction along the airport road on the East bank of the Demerara river past the spot at which the virtual complainant was picked up, between say 7:30 p.m. and 9:30 p.m. on the 27th March, 1999,

(b) matched the general description given of his assailant by the virtual complainant i.e. a low cut, a round face and big build, and

(c) had with him in the police car a small bottle of blue perfume?

[31] There are two factors which detract from the force of the first of these coincidences. First, there is a discrepancy between the time at which,

according to the evidence of the virtual complainant and his mother, the virtual complainant was picked up by the police officer, and the time when, according to the evidence of the police witnesses and the appellant, the appellant drove in a northerly direction past the point at which the virtual complainant was picked up. The incident could not have happened long after the virtual complainant left his mother's work-place and she said she saw him at 7:30 p.m. She also testified that she next saw her son when he returned to her work-place around 9:30 p.m. According to the virtual complainant, it was about 7 p.m. when he was on the road going home.

[32] The evidence of the police witnesses was that the appellant left the Grove Police Station with Sgt. Gibson, and drove in a southerly direction to Gibson's home, and then returned to Grove Police Station via the airport road. According to WPC Cameron the two officers left the station at 8 p.m. and the appellant returned alone at 11 p.m. According to Sgt. Gibson, however, he and the appellant did not leave the station until 9:30 p.m. The appellant in his unsworn statement said that he and Sgt. Gibson left the station at 8:30 p.m. and reached Gibson's home at 9 p.m and he returned to the station at 9:30 to 9:45 p.m.

[33] Mr. Hughes made much of this discrepancy as to time and suggested that the evidence raised a defence of alibi since it disclosed that the appellant was at the station at the time when the offences were committed. We do not think that it is either realistic or helpful to regard the defence in this case as one of alibi. The question which the jury had to ask themselves was whether the discrepancy as to time was so significant that it could not be explained as attributable to a faulty estimation or recollection of time by one or more of the witnesses. It is perhaps significant in this connection that there was such a wide difference between the evidence of the two police officers, WPC Cameron and Sgt. Gibson, as to the time at which Gibson and the appellant left the station.

[34] The other factor which tends to reduce to some extent the improbability of another police officer replicating the movements of the appellant that night, was the fact that because of the President's departure there were a number of police vehicles along the airport road that night, some providing an escort for the President and others controlling traffic. One question which unfortunately was left unanswered on the evidence, was whether any of these other vehicles would have been manned by a solitary policeman.

[35] With regard to the virtual complainant's description of his assailant, it would hardly be surprising if that matched other police officers who might have been driving police vehicles in the area that night. The case against

the appellant would have been much stronger if there had been evidence that he habitually wore or had in his possession that night a pair of glasses similar to those which the virtual complainant said his assailant wore, but no such evidence was given.

[36] The finding of the perfume bottle in PFF-6669 is undoubtedly more difficult to explain away on any premise other than that it was in that car that the appellant was raped. Here again, however, there is some weakening of the inference to be drawn because of the failure on the part of the prosecution to explain an apparent discrepancy between the evidence of ASP Lawrence and that of Cpl. Gravesande. Lawrence deposed that before leaving Grove Police Station on the morning of the 28th March, 1999, he "checked" motor-car PFF-6669 and "found nothing of evidential value". Cpl. Gravesande testified that he found the perfume bottle later the same morning in the pocket behind the driver's seat in that vehicle. It was also unfortunate that after the bottle was put into evidence by Inspector Deonarine at the preliminary inquiry, it could not be found and so was never produced at the trial. This was at least capable of detracting to some extent from the impact which this evidence would have made on the jury.

[37] In our view the circumstantial evidence provided sufficient support for the unsatisfactory visual identification of the appellant by the virtual complainant, to warrant the case being permitted to go to the jury, even if there had been no evidence of a self-incriminating admission by the appellant – see *Reg. v. Turnbull*[1] and *Reg. v. Long*[2]. We do not consider, however, that the circumstantial evidence was so conclusive that it would inevitably have led a jury which was properly directed to return a guilty verdict. Accordingly, this is not a case in which the proviso can be applied and on this issue we differ from the Court of Appeal.

[38] We cannot leave this aspect of the case, however, without expressing again our regret that there were so many loose ends left in the prosecution's case which if they had been tied, might have led to a different outcome. We refer in this respect particularly to the absence of any evidence either that the virtual complainant identified the vehicle PFF-6669 as the one in which he was raped, or that PFF-6669 had the peculiar features, namely, a broken window lever and a red seat and door panel, which the virtual complainant observed in the car in which he was raped. Had the prosecution been able to establish that it was in PFF-6669 that the virtual complainant was raped, then there certainly could have been no other verdict but one of 'guilty' returned.

---

[1] [1977] Q.B.224 at 230
[2] (1973) 57 Cr. App. R. 871

[39] The evidence of the virtual complainant took the prosecution's case to the brink of establishing that vital fact when he said:

> *"I saw the vehicle again at Ruimveldt Police Station on 29th March, 1999. I showed my parents the car. The car was a sprinter. The control for the window was broken off on the night of the incident. The car was white with blue stripes. I looked inside vehicle on 29th. The handle was broken. The seat and door panel was red. I pointed out the vehicle to my parents and a police officer."*

[40] Unfortunately, the police officer to whom he pointed out the vehicle, was not identified and no evidence was given by anyone that the vehicle which he pointed out was in fact PFF-6669. Nor surprisingly, was there any evidence that PFF-6669 had a broken handle or a red seat and door panel. The failure to make the link between the car in which the virtual complainant was raped and that which the appellant drove on the night in question, was perhaps the most egregious of many shortcomings in the investigation of the offence and the marshalling and presentation of the evidence for the prosecution.

[41] It is pointless, however, to dwell on these shortcomings. On the evidence as it stands, it is impossible to say that a jury properly directed would inevitably have convicted the appellant. In those circumstances, given that there was a material misdirection on the crucial issue of the oral confession, we had no option but to allow the appeal and quash the convictions and sentence.

OTHER GROUNDS OF APPEAL

[42] With regard to the other grounds of appeal argued, while there was substance in some of the criticisms made of the summing-up, we do not think that any of them, either singly or collectively, would have provided a sufficient basis for quashing the convictions. We do not think it necessary in the circumstances to discuss any of these other grounds in any depth.

[43] One flaw in the summing-up may be worth pointing out. The Judge correctly directed the jury that in the case of sexual assault it was dangerous to convict without corroboration, and he explained to the jury what corroboration meant. He did not, however, go on, as he should have, to identify what parts of the evidence, if any, were capable of amounting to corroboration. Given the Judge's emphasis on the alleged self-incriminatory statement by the appellant (which was manifestly

corroborative), this omission was unlikely to have had any practical ill-effects in this case.

[44] With regard to the complaint that the Judge did not issue any warning about the danger of relying on evidence of an oral admission of guilt, while it may be advisable in appropriate circumstances to draw the jury's attention to the ease with which such "verbals" as they are called, may be fabricated, and the difficulty of disproving them, there is no strict rule requiring that such a warning be given in every case. We do not think that the judgment of the Trinidad and Tobago Court of Appeal in *Boodram v. The State*[3], suggests that such a warning is required in every case. If it does, we would respectfully disagree.

[45] There is no merit whatever in the argument that Lawrence's deposition, and more particularly so much of it as relates to the alleged oral confession by the appellant, should not have been admitted into evidence. There was nothing in the deposition itself which could provide a basis for a finding that the oral statement was made involuntarily, and no such evidence was proffered by the appellant whose case was simply that the oral admission was never made.

[46] The appellant was at the time of his arrest a Police Lance Corporal and from that fact alone it can safely be inferred that up to then he had a clean record. In his unsworn statement he said that he had served in the Guyana Police Force for 12 years and during that time "had no problems with the Guyana Police Force". In these circumstances, if one applied the common law as it has developed in England, it might well have been incumbent on the trial Judge to direct the jury that they ought to treat the appellant's good character as relevant for two purposes. Firstly, in assessing his credibility in relation to his unsworn statement, and also as it affected the likelihood of his having committed the offences with which he was charged. The need for such a direction has been established in England by a number of authorities including notably the decision of the Court of Appeal in *R. v. Vye*[4] and that of the House of Lords in *R. v. Aziz*[5]. This requirement has been strictly construed and applied by the Judicial Committee of the Privy Council in several cases coming from Caribbean countries e.g. *Sealey & Anor. v. the State (Trinidad & Tobago)*[6] and *Paria v. The State (Trinidad and Tobago)*[7].

---

[3] (unreported) Cr. A. No. 17 of 2003
[4] 97 Cr. App. R. 134
[5] [1996] 1AC 41
[6] (2002) 61 WIR 491
[7] (2003) 62 WIR 471

[47] No such direction was given in this case, but no complaint of this omission was made by the appellant either before the Court of Appeal or before us. Even if the point had been taken, it could not have affected the outcome of this appeal. In those circumstances we express no view whatever as to whether failure to give a 'good character direction' in this case would have constituted a sufficient reason for quashing the convictions. We nevertheless wish to call the attention of Judges in Guyana to the line of cases referred to above even though we have not yet had the occasion to consider how far they are or should be applicable in Guyana. Judges may wish to err on the side of caution by giving the prescribed direction whenever there is evidence from whatever source that establishes the previous good character of an accused person. We would like, however, to make it clear that we are not in this judgment attempting to define the circumstances in which a good character direction as to either credibility or propensity should be given, or to indicate what the consequences of a failure to give such a direction will be in any particular case.

POSSIBILITY OF RE-TRIAL

[48] The only other question which arose was whether we ought to have ordered a re-trial. We decided that that course was not what the interests of justice required. In reaching that conclusion we took into consideration inter alia: (a) the length of time (over seven years) which had elapsed since the appellant was arrested; (b) the opportunity which a re-trial would give to the prosecution to correct the several mistakes which were made at the first trial; and (c) the ordeal which a second trial would involve not only for the appellant but also for the virtual complainant.

[49] In the result, we allowed the appeal, quashed the convictions and sentence and ordered the appellant to be discharged.

/s/
Mr. Justice Michael A. de la Bastide (President)

/s/
Justice Rolston Nelson

/s/
Justice Adrian Saunders

/s/
Justice Désirée Bernard

/s/
Justice Jacob Wit