



JUDGMENT

**(1) Francis Eiley, (2) Ernest Savery, (3) Lenton
Polonio v The Queen**

From the Court of Appeal of Belize

before

**Lord Phillips
Lord Rodger
Lady Hale
Lord Brown
Sir Jonathan Parker**

**JUDGMENT DELIVERED BY
Lord Phillips
ON**

4 November 2009

Heard on 8 June 2009

Appellants
Michael Grieve QC

(Instructed by Simons
Muirhead & Burton)

Respondent
Not represented

LORD PHILLIPS :

Introduction

1. San Pedro is a small fishing town on an island off the coast of Belize. There, in the early hours of 2 November 2002, Justo Jario Perez was bludgeoned to death by blows to the head. On 13 August 2004, in the Central District of the Supreme Court of Belize, the three appellants were convicted of his murder, after a trial before Gonzalez J and a jury. On 18 October 2005 the Court of Appeal of Belize, Mottley P, Sosa and Carey JJ dismissed their appeals against conviction. They appeal to the Board with special leave granted on 8 April 2009.

2. The prosecution have not thought fit to appear on this appeal. The Board understands that the reason for this may be simply the cost that representation on the appeal would have involved. This is regrettable. Prosecuting authorities of countries that have preserved the right of an appeal to Her Majesty in Council should recognise the importance that the Board attaches to receiving appropriate assistance where appeals are brought against criminal convictions, especially where these are against convictions for an offence as serious as murder.

3. The appellants were convicted on the evidence of one man alone, Frank Vasquez. He had been apprehended at the scene of the murder with bloodstained shoes and clothing and was initially charged with murder. The charge against Mr Vasquez was subsequently withdrawn under an agreement with the Director of Public Prosecutions under which Mr Vasquez was promised immunity from prosecution if he gave truthful evidence at the trial.

4. Before the Court of Appeal Mr Eiley and Mr Savery were jointly represented and Mr Polonio was separately represented. The grounds of appeal attacked the summing up by the trial judge on diverse grounds. The Board considers that these are likely to have obscured the strength of the appellants' case, as advanced before the Board on behalf of all three appellants by Mr Michael Grieve QC, who appeared with Mr Tom Allen pro bono. The Board is grateful to counsel for their assistance. The essence of the appellants' case is that the evidence of Mr Vasquez could not and cannot safely support the appellants' convictions. Mr Grieve advanced this case in a number of different ways: the evidence of Mr Vasquez should not have been admitted; the judge should have withdrawn the case from the jury at the close of the prosecution case; the Board must be left in doubt as to the safety of the appellants' convictions. Mr Grieve accepted, however, if the last ground of appeal is made good the appeals will succeed whereas, if it is not, the first two grounds cannot prevail. Mr Grieve buttressed his grounds of appeal with criticism of the manner in which the judge placed the appellants' defence before the jury.

Uncontentious evidence

5. Mr Perez lived in a one room apartment on the upper floor of a two storey building at 1 Pescador Drive, San Pedro Town. The sole access to that apartment was up a flight of steps. At the same address lived a woman whose daughter is married to Mr Dimas Guerrero, who is the head of a security firm and who lives elsewhere in San Pedro. In the early hours of 2 November 2002 Mr Guerrero received information which caused him to equip himself with a revolver and handcuffs and to go to 1 Pescador Drive. There he found Mr Vasquez in the back yard under the steps that led up to the apartment of Mr Perez. He was carrying a knife, about a foot long, and was heavily bloodstained. Mr Guerrero seized and handcuffed Mr Vasquez, placed him in the custody of two women who had come to the scene and went up the staircase. In a corridor, about five feet from the top of the stairs, he found the body of Mr Perez, lying in a pool of blood that had come from wounds to his head. His hands and feet were tied with shoe laces and he had duct tape over his mouth.

6. At about 5 a.m. a police officer, PC Espot, went to the scene. He noticed, near the body, a roll of duct tape and two crowbars. He returned to the police station, where he interviewed Mr Vasquez, in the presence of a Magistrate. He noticed that Mr Vasquez was wearing a pair of white tennis shoes that were stained with blood and that his trousers and jacket also had bloodstains on them. His shoe laces were missing. During the course of his interview Mr Vasquez volunteered to take the police to where the persons responsible for the murder were to be found. It does not appear that he told the police how many these were, or that he named or described any of them.

7. PC Espot and another police officer got into a police vehicle with Mr Vasquez, who directed them to an area near the lagoon. There, in Tarpon Street, they came on four men, whom Mr Vasquez indicated were responsible for the murder. These were the three appellants and a fourth man called Marcel Burmudez. PC Espot stated in evidence that he had previously become acquainted with Savery, Polonio whom he knew as "Kid" and Eiley, whom he knew as Chino, on the streets of San Pedro. Eiley subsequently accepted that he was known as Chino, but Polonio denied that he had ever been called Kid. The four were arrested. The time by now was about 6 a.m. None of the men bore any traces of blood.

8. The police subsequently concluded that Mr Burmudez was not implicated in the murder. At the trial a police witness explained in relation to this:

"During the process of the investigation, I was told certain things by Frank Vasquez and other information which I gathered."

Mr Burmudez was released.

9. Subsequent inspection of the site of the crime disclosed that attempts had been made to break into a safe in Mr Perez's room.

10. On the evening of 2 November a fifth man was arrested called Kevin Gonzalez. He was a nephew of Mr Perez. Mr Vasquez had identified him as having been with the appellants before the murder. Mr Vasquez, the three appellants and Mr Gonzalez were all charged with murder.

The first statement of Mr Vasquez

11. On the evening of 2 November 2002 Mr Vasquez made a statement under caution. He said that he had gone to San Pedro by boat on 31 October in company with Mr Savery, whom he called "Seidy". There they had subsequently met "Chino", "Kid" and a fourth man, whose name he did not know ("the fourth man") and a white man of "Spanish descent". This was Mr Vasquez's description of Mr Gonzalez.

12. In the early hours of 2 November, after spending some time together, the three appellants and the fourth man set out on an enterprise the nature of which had not been disclosed to Mr Vasquez, but he none the less accompanied them. They reached the yard of a "pre-school", where Mr Vasquez was asked to wait as watchman. At this point Kid borrowed Mr Vasquez's tennis shoes. The four men then went to a high house next door to the pre-school and were gone for about 30 minutes while Mr Vasquez sat on a swing outside the pre-school. Kid then appeared and threw his tennis shoes back to him, but one fell inside the yard of the high house. He climbed over the fence to retrieve it, at which point he was apprehended by Mr Guererro. A woman then arrived, accused him of killing her uncle and started to beat him, at which point the four men jumped in front of them and ran away.

13. Mr Vasquez then described getting the police to accompany him to the lagoon side and identifying the four men who had been with him. He said that it was dark when he did so and that they had already changed their clothes. He was quite unequivocal in stating that the four men whom he identified were the four men with whom he had been during the night's events, referring to "the four men" whom he had identified no less than four times.

The immunity agreement

14. On 6 November, after four days in custody, Frank Vasquez signed an agreement with the Director of Public Prosecutions that read as follows:

“It is hereby agreed and declared as between the parties hereto, these being respectively the Director of Public Prosecutions and Frank Vasquez, that in consideration for the providing by you of completely truthful testimony in the case of *R v Kevin Gonzalez Jr* – murder of Jairo Perez, in respect of which case, the Director of Public Prosecutions has decided that your evidence is necessary, Frank Vasquez is hereby guaranteed immunity from the institution of the charge(s) of murder, vis a vis the death of Jairo Perez. This agreement is made subject to the provisions of Section 95 of the Evidence Act of Belize (Chapter 95)”

15. The last sentence of this agreement was not accurate. Section 95 of the Evidence Act of Belize 2000 (Chapter 95) states as follows:

“A judge of the Supreme Court, with the written consent of the Director of Public Prosecutions, may order that a pardon be granted to any person accused or suspected of, or committed for trial for, any crime on condition of his giving full and true evidence upon any preliminary inquiry or trial, and such order shall have effect as a pardon by the Governor-General, but may be withdrawn by a judge of the Supreme Court upon proof satisfying him that the person has withheld evidence or given false evidence.”

No judicial order was in fact made.

The second and third statements of Mr Vasquez

16. On 12 November 2002 Mr Vasquez made a second statement, which was supplemented by a further statement that he made on the following day. These statements differed from his first statement but did not differ significantly from the evidence that he subsequently gave at the trial of the three appellants. So far as Mr Vasquez’s identification of those who had been with him on the night of the murder is concerned, he stated simply:

“When I was arrested, the other fellows were also arrested as I identified them to the police on the said morning”.

17. On 14 November 2002 the charge of murder against Mr Vasquez was withdrawn on the directions of the Director of Public Prosecutions. Subsequently, apparently because of procedural shortcomings on the part of the prosecution, the case against the other defendants was struck out. In September 2003 fresh information was sworn against the three appellants and Mr Gonzalez. The whereabouts of Mr Gonzalez were unknown and remained so at the time of the trial.

Mr Vasquez's evidence at the trial.

18. Prosecution witnesses gave evidence of the involvement of Mr Vasquez in the events surrounding Mr Perez's murder as the Board has described it at the beginning of this advice. The only witness to give evidence that implicated the appellants was Mr Vasquez. His evidence was as follows.

19. Mr Vasquez lived in Belize City. On 29 October 2002 he and his uncle, Frederick Dougal, decided to go to San Pedro Town for Halloween. On arrival at the island they met Mr Savery, a man he also knew as Seidy. He had met Savery through his uncle and known him for over a year. Mr Savery borrowed \$25 from him and the three men went to a bar, where Mr Savery met a man of Spanish descent and they were also joined by a man named "Mei Mei". The man of Spanish descent went off and the other four went to Mei Mei's apartment. Mr Savery then left them, having been given some more money by Mr Dougal, saying that he would find them a cheap room. He did not return, however, so they spent the night at Mei Mei's apartment.

20. Mr Savery came back briefly the next day, Wednesday 30 October, and explained that he had spent the night at Chino's. Chino was someone whom Mr Vasquez had seen around but whom he did not know to talk to. Mr Vasquez and Mr Dougal spent the day at Mei Mei's apartment and, in the evening, Mr Savery returned with Chino, a man whom Mr Vasquez did not know but whom Mr Savery called "Kid", and a "slim dark guy". Mei Mei was also present. Then a "white descent guy" arrived and Mr Savery introduced him to Mr Dougal. There was some conversation in the course of which the white descent man said "it's like a piece of cake". Mr Savery and the white descent guy left for 15 minutes, then returned and the white descent guy left again. At this point Mr Savery asked Mr Dougal if he wanted any part of this, to which Mr Dougal replied that he did not. Mr Savery, Chino Kid and the slim guy then left.

21. On the following day, Thursday 31 October, Mr Savery and Chino appeared for half an hour in the morning, during which Mr Savery had a discussion with Mr Dougal. In the evening Mr Savery and Chino reappeared. Mr Savery told Chino to "go and get di stuff", whereupon Chino went away and returned with a knapsack, from which he transferred two crowbars, a roll of silver tape and a shoe lace to a larger bag. The two men then left.

22. On the following day, Friday 1 November, Mr Savery and Chino once again appeared for about half an hour, but then left again. Mr Vasquez and his uncle remained in the room all day.

23. At about 1 or 2 am on Saturday 2 November Mr Savery, Chino, Kid and the slim guy returned. They were under the influence of alcohol, laughing and making a noise. Mr Vasquez asked Mr Savery for the \$25 that he had lent him and for the money that he had been given to find a hotel room. Mr Savery said “let’s go that Chino house fu di money” and all of them save Mr Douglas set off into the night.

24. After walking for about 15 minutes they reached a yard in which stood a two storey building. There a man whom Mr Vasquez recognised as the “white descent guy” who had come to Mei Mei’s home on 30 October appeared and, with a bunch of keys, opened the gate into the yard.

25. The others told Mr Vasquez to wait in the yard, while they went to the back of the house. After about 5 minutes he heard a cry from the house and started to walk up the stairs at the back of the house. When he was three steps from the top of the staircase he heard a cry of pain. To his left was a corridor, which he described as a verandah. The yard light enabled him to see inside the corridor. There he saw Mr Savery and Chino hitting a man on the ground about the head with crowbars. Blood was spurting all about. Kid was kicking the victim in the stomach and the slim guy was tying his feet with a shoe lace. The white descent guy was in a corner of the verandah.

26. After about 5 minutes Mr Vasquez started to go down the steps. At this point Chino was putting duct tape over the victim’s mouth. Mr Savery then called to him and handed him a jacket. It was soaked in blood. He dropped it on the steps. Blood was spraying about and he got it on his shirt and pants, albeit that on his evidence he was never closer to Mr Perez than about 4 feet. He wiped the blood off and headed down stairs. He was holding a silver knife, about 1 foot long. He then met a Spanish person who was then joined by a second, a Spanish security man, who crossed the fence, holding a gun in his hand. He placed Mr Vasquez in handcuffs and then entrusted him to the custody of two stout ladies who had come on the scene, before going upstairs. There was a struggle and one of the ladies hit Mr Vasquez on the head with a flashlight.

27. Mr Vasquez was then taken to San Pedro Police Station. At about 6 am he was taken out of his cell by a police sergeant. He told the sergeant that he was “willing”. He was then driven around the town by the police. Near one of the docks he saw Mr Savery, Chino and Kid coming towards him. He identified them to the police officer, who apprehended them.

28. Mr Vasquez was vigorously cross-examined. It was put to him that the murder had been committed by himself and his uncle and that the evidence that he had given against the appellants was fabricated in order to buy his own immunity. He denied this. In the course of cross-examination it was put to Mr Vasquez that in his second statement he had identified the men who had been with him when they were picked up by the police. He said that that was a mistake. He explained discrepancies between his first statement and his subsequent evidence by saying that when he made his first statement he was afraid because of threats that had been made by Chino's brother. He agreed that he had blood on both the uppers and the soles of his tennis shoes. He said that this came from blood which had run down the stairs and from the blood-stained jacket that he had dropped. He agreed that his shoes had no laces in them, but denied that the laces had been used to tie up Mr Perez. He said that he had taken them out to put into another pair of shoes.

29. Mr Vasquez accepted that he had faced various drugs and burglary charges and that he had been shot by the police in the course of a suspected burglary. He was questioned about the knife that he had with him on the night of the murder. He said that he had brought this with him because he had been in the course of peeling an orange when they set out that evening.

Defence evidence

30. Each of the defendants gave evidence. That of Eiley and Savery was consistent. Savery said that he caught a boat from Belize City to San Pedro in the afternoon of 1 November and went straight to Eiley's house. They both spent the night there and went out at about 5.30 on the morning of the 2nd when they met the other two men arrested. They were on their way to "Rubi's" to get something to eat when they were arrested.

31. Polonio said that he had spent the night at a hotel with a girl called Margie, who was from Chicago. He met the others and went with them towards Rubi's to get something to eat. He knew Eiley and Burmudez, whom he knew as "Sugar".

32. Cross-examination did not shake this evidence and the prosecution did not demonstrate that any of the alibis was untrue. PC Espat was cross-examined about Mr Vasquez's initial identification of the appellants. He confirmed that Mr Vasquez had pointed them out, together with Mr Burmudez, as the men responsible for the crime. He confirmed that, so far as Mr Burmudez was concerned, Mr Vasquez had pointed out the wrong person. The following exchange then took place:

“Q: Do you have any reason to believe that the other persons he pointed out were not wrongly pointed out?”

A: No

Q: You have any additional reason, anything that you can tie them besides him pointing them out? Is there anything, is there any piece of evidence that you got that could tie them into this scene?

A: No”

The trial process

33. Aspects of the trial were less than satisfactory. There was forensic evidence available that clothing and tennis shoes were stained with blood that was the same type as Mr Perez. These had presumably been taken from Mr Vasquez. There was also evidence that a bloody partial footprint found at the scene had the same width and similar ridge design as that of the right tennis shoe. This evidence was not adduced at the trial, but was none the less put to Mr Vasquez in cross-examination.

34. Police Inspector Moreria gave evidence that he had caused an identity parade to be carried out on Mr Savery, to which Mr Savery had not objected. He did not say who was being asked to identify Mr Savery, to what end, or with what result.

35. Prosecuting counsel left to a deputy the task of making the closing address of the prosecution to the jury. As he told the jury, he had only completed his law studies a year before. His enthusiasm was in inverse proportion to his experience. Unhappily, much of his address was inappropriate, calling on occasion for intervention from the bench. It cannot have afforded the jury the assistance that they could reasonably expect from the prosecution.

The judge's task

36. These matters added to the importance of the summing up, which was not an easy task in any event having regard to the unusual nature of the case. Mr Vasquez had been caught literally red-handed at the scene of the crime. The initial story that he told the police was simply not credible. His account of lending his tennis shoes was patently absurd and he had

no acceptable explanation for the blood on his clothes. He was a prime suspect. In these circumstances the decision of the prosecution to offer him immunity if he gave truthful evidence was, on the face of it, surprising. It was capable of providing a cogent motive for ensuring that the jury convicted the three men whom he had accused of being implicated in the murder. The jury needed a careful direction to that effect.

37. The defence run by the appellants was that Mr Vasquez had lied about their involvement to cover up the fact that he and his uncle were responsible for the crime. The judge needed to put at the forefront of his direction to the jury the fact that it was his word against theirs. The case turned on credibility. There was no scope for a finding of honest mistake of identity on the part of Mr Vasquez.

38. The judge needed to point out certain weaknesses or implausibilities in Mr Vasquez's evidence. These were:

- (1) the discrepancy between his first account to the police and the evidence that he gave at the trial;
- (2) the fact that it was still not easy to understand how he got blood on his clothes and shoes;
- (3) the strange coincidence that he had no shoe laces and laces were used to tie up Mr Perez;
- (4) the reason given for having a knife.

39. These matters suggested the possibility that Mr Vasquez was still lying to distance himself from involvement in the murder, but did not necessarily lead to the conclusion that he was lying about the appellants' involvement. As to this, the evidence of his first identification of the appellants was of critical importance. The judge needed to point out to the jury that Mr Vasquez had not informed the police of the identity of any of the appellants before the identification, although he knew Savery and Chino. Also important was the fact that, according to his first statement and according to P.C. Espat, one of those whom he identified, Mr Bermudez, had taken no part in the murder.

40. The first ten pages of the transcript of the judge's summing up consisted of general directions, including the necessary directions on burden and standard of proof. He pointed out that Mr Vasquez was the key prosecution witness and that there were inconsistencies between his evidence and what he had told the police. He remarked that inconsistencies may affect credibility, but then remarked that "differences in evidence of witnesses are to be expected". He then gave a lengthy direction on the elements of murder and the law of joint enterprise. After that he dealt, at unnecessary length, with the unchallenged expert evidence as to the cause of Mr Perez's death, telling the jury that they were not obliged to accept this evidence. He then gave a wholly inappropriate direction on self defence. This was followed

by a direction on intention to kill of quite unnecessary length having regard to the nature of the injuries inflicted on Mr Perez and the manner in which they were inflicted.

41. At last the judge told the jury to focus on what he described as the “final element of the charge...who was the author or who were the authors of the crime?” The judge then gave a forceful direction as to the caution with which the evidence of Mr Vasquez had to be approached, having regard to the fact that he had been charged with murder and then done a deal with the DPP. He added to this a standard accomplice warning. The judge returned to this theme later in the summing up.

42. The judge then summarised, without comment, the evidence that Mr Vasquez had given about the murder and the events leading up to it. He recounted the evidence of Mr Vasquez’s identification of the appellants in the following passage:

“We ended up on a dock next to Thunder Bolt’. While he [sat] in the vehicle in that area, he saw Chino, Savery, and Kid coming towards them. He then identified them to the police officer who was with him at the time, and these men were apprehended, and taken to the San Pedro Police Station. Bear in mind that at this point of his evidence he never said he pointed them out and said, these were the men who mauled, or who killed Jario Perez. He merely identify [sic] them, which is different from saying, I identify them as the persons whom I saw doing the act earlier that day.

Now, this portion of Vasquez’ evidence is disputed by the three accused persons who in their testimony explained how they were picked up. They said that the police while in their vehicle first stopped in a different area as shown by the witness at the locus. They said they were searched, released, and very shortly afterwards they were once more stopped, and asked to place themselves in the vehicle, and taken to the police station. P.C. Manuel Espat, however, confirms this evidence of Vasquez, though not the location where they were picked up when he said in his testimony, ‘After he, Vasquez, volunteered to take me to where the men were, I put him in a pickup, and myself, and Christopher Hendricks went with him to look for the men. We travel to an area near a lagoon, west of the island.’ They passed an old football field, and Thunder Bolt dock, and Black Coral Street, and then Tarpon Street, and then about 15 feet from the lagoon, Vasquez showed him, that is, Espat four individuals which he pointed to him. He apprehended them, and these persons which were pointed out to him, and whom he apprehended were Marcel Burmudez, Lenton Polonio, Ernest Savery, and Francis Eiley. And it was this constable, Espat, who said in his testimony that he knew Polonio to be called Kid, and he knew Chino to be called Chino. But, Members of

the jury, this is the evidence adduced by the prosecution, this evidence of Frank Vasquez who said that he had witnessed the crime, and then identified the three persons, though not identified them and say these were the persons who I saw doing the act.”

In this rather confusing summary the judge failed to invite the jury to consider the significance of the fact that Mr Vasquez appeared wrongly to have identified Mr Burmudez as one of the murderers. The judge did not direct the jury on any of the other weaknesses in Mr Vasquez’s evidence.

43. The judge then gave the jury a very lengthy *Turnbull* [1977] QB 224 direction on identification. He explained the need for this by telling the jury that:

“...the defence is inviting you to find that the witness, Frank Vasquez, is mistaken as to the identity of the accused persons. In this regard- - you see, because they are challenging that very issue that it was not them, so what they are in fact telling you is that no, Frank Vasquez must be mistaken. You see? In this regard, I must, therefore, warn you of the special need for caution before convicting the accused persons in reliance on the evidence of this identification.”

44. This direction was not merely inappropriate, it was potentially damaging to the appellants’ case. There was no possibility that Mr Vasquez had made a mistake of identity. As the judge pointed out, it was his case that he had been with the men who took part in the murder for at least three days and right up to the murder itself. If the jury thought that the case turned on whether Mr Vasquez had made a mistake of identification they were almost bound to decide that the appellants were guilty.

45. The judge then summarised the alibi evidence that the defendants had given and gave the jury an unnecessary direction on lies to cover the eventuality that the alibi evidence was not believed.

46. At the end of the summing up counsel drew the judge’s attention to the fact that the defence case was not mistaken identity, but fabrication of evidence by Mr Vasquez. The judge sought to retrieve the situation by adding the following postscript to his summing-up:

“What learned defence counsel is saying that I should leave for your consideration, Madam forelady, and Members of the jury, is that in an effort to escape prosecution, and perhaps, successful prosecution, when the police asked Vasquez about

the crime whether it was him, he find him compelled to take away the responsibility from himself, and put it on somebody else, to get away from the charge of murder. Okay? So the defence is saying that it is not only that he mistakenly identified these persons, it goes beyond that, he fabricated the whole [thing], and perhaps, I should have also left that to you immediately after I dealt with the question of recognition and mistaken identity, or identification. Okay? Their position is that in an effort to say, save himself from the law, he fabricated this evidence against, or what he has said against the three accused persons.”

The Board does not consider that this postscript would necessarily have undone the damage done by the earlier part of the summing up.

Conclusion

47. It is a remarkable feature of this case that there was absolutely no corroboration of any element of Mr Vasquez’s evidence. His uncle Mr Dougal would have been in a position to corroborate his story, if true, but he was not called to give evidence. In a small town such as San Pedro one would have expected that there would have been witnesses able to corroborate some of the comings and goings of the appellants in the vicinity of Mei Mei’s home of which Mr Vasquez had spoken. Whether or not the homes of any of the appellants were searched is not known. Certainly no evidence was given of bloodstained clothing or anything else to connect them with the killing. No evidence was adduced, other than that of Mr Vasquez that threw any doubt on the alibi evidence of the three appellants. Added to this is the fact that Mr Vasquez appears initially to have wrongly identified a fourth man as having been present at the murder.

48. Mr Vasquez had been promised immunity from prosecution if he told the truth. Despite this, his evidence had features that were unsatisfactory and suggested that his primary concern was to distance himself from involvement in the murder. The Board has not been able to dismiss the possibility that on the morning after the murder Mr Vasquez simply pointed to the first group of men that he saw after indicating to the police that he would take them to those who were involved in the crime.

49. A judge enjoys a discretion to exclude evidence if the circumstances in which it has been obtained are such as to render its admission contrary to the interests of justice. One circumstance where it may be appropriate to do so is where the witness has received an inducement to give evidence for the prosecution that will render the evidence suspect – see *R v Turner* (1975) 61 Cr. App. R. 67 at p. 78. The discretion is one that should be used

sparingly. Such promises, when made to an accomplice to a crime, have been described as distasteful – see *Turner* at p. 80. They are nonetheless capable of being justified in the public interest. While the Board has reservations as to whether it was appropriate for the Director of Public Prosecutions to enter into the immunity agreement that was concluded with Mr Vasquez, their Lordships do not consider that the trial judge should have refused to receive the evidence of Mr Vasquez of his own motion.

50. None of the defence counsel applied to have the trial stopped at the end of the prosecution case under the principle in *R v Galbraith* [1981] 1 WLR 1039. Had such an application been made the Board considers that it would have had merit. It would, however, have been an unusual and extreme step for the judge to have ruled that there was no case upon which the jury could safely convict in the absence of any submission to this effect from any defendant. The critical question is whether having regard to the nature of the evidence given by Mr Vasquez, the circumstances in which it was given and the terms in which the judge summed up the evidence to the jury, the appellants' convictions are safe. The Board has concluded that they are not. For these reasons their Lordships will humbly advise Her Majesty that the three appeals should be allowed and the convictions of the appellants quashed.