

# A case brief on nimrod miguel versus the state

Business



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Richardson\_\_\_\_\_ 409004607 Case: Nimrod Miguel (Appellant)

v The State (Respondent) Court: Privy Council Date of Decision: June 15th

2011 Citation: [2011] UKPC 14 Procedural History: Nimrod Miguel was

convicted of murder at his trial and was given the death sentence. Mr. Miguel appealed to the Court of Appeal of Trinidad and Tobago who dismissed his appeal.

He then appealed to the Privy Council. Facts: The appellant and four other men robbed the victim's car; the appellant then tied him up and searched his car.

After refusing to shoot the deceased, he walked off, and as he was walking, his counterpart shot the victim. The appellant's fingerprints were found on the number plates which led to his arrest. Issues 1) Was there misdirection as to " withdrawal"? 2) Should the judge have allowed the appellant's statements to be admitted as evidence even though it was against Judges' rules? ) Was the jury misdirected as to the approach to the statements? 4) Was the death sentence ' unconstitutional'? Judgment- Appeal on conviction- dismissed. Appeal on sentence - allowed. Rule of law- The jury was not misdirected as to " withdrawal".

To address the issue of withdrawal, the felony rule and joint enterprise needs consideration. The crucial questions for the jury were: did the appellant

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commit an arrestable offence? Did the victim die while the offence was being committed? It cannot be submitted that jury was misdirected under the felony murder rule.

He also made it clear that the jury must be sure that he was still involved in the robbery at the time of the murder. In the Board's judgment, There is no doubt that the jury was convinced that the appellant did not withdraw at the time of the victim's killing. Hence the Board concludes there was no misdirection in regard to withdrawal.

2) The judge could allow the evidence at his discretion. Lord Carswell outlined the doctrine of this discretion in *Perle vs. The Queen*. The issue was whether the judge was in error by using his discretion?

The board finds that he was not in error in using his discretion and he could allow the evidence as per the rules outlined by Lord Carswell. 3) The jury was not misdirected on the correct approach to the statements. Three areas need to be examined namely: Alleged physical oppression, the principle in *R v Mushtaq* and insufficiency of the summing up identified by the Court of Appeal. The appellant never claimed that he was encouraged to make a statement and the *Mushtaq* direction would only confuse the jury.

The judge's directions and questions were clear and relevant respectively; he also emphasized that prior to acting on admission they had to be sure the appellant made those statements. The Board finds that there was no misdirection. 4) The sentence of death is unconstitutional. The issue in deciding this ground hinged on whether or not the 1997 act 'altered' the existing law.

In the Board's view, the 1997 act did not repeal the law. The act did not replace the common law because it was already replaced; neither did it abolish the 1979 act, it just created a new provision.

Existing law can only be altered if it is replaced by existing law within paragraph (b) or (c) of section six of the Trinidad and Tobago constitution, and it did not in this instance. Supporting Argument: The sentence The Board refuses to accept that one law can repeal the existing law even if the law was repealed in the past. The 1997 act did not "alter" the existing law, but created a new provision, hence, it did not fall within section 6 paragraph (b) or (c) of the constitution of Trinidad and Tobago.

Losing Arguments: Directions on withdrawal

There can be no submission that there was misdirection under the felony murder rule. The judge made it clear that the jury had to be sure that the appellant was still involved in the robbery at the time of murder; he also made this clear as to joint enterprise. There is no doubt that the jury was certain the appellant did not withdraw. The allowance of the statements as evidence The judge's rules are not a rule of law but an administrative guideline; judicial power is not bound by these rule and these statements are in fact admissible in court by the judge's discretion.

It is Board's opinion that the judge did not make an error in using his discretion, and he had the right to admit the evidence as per the rules given in Perle vs.

The Queen. Direction as to the statements The appellant submitted to the Court of Appeal and the Board that the judge did not assist the jury

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adequately with the issues regarding the confession. The Board disagrees. The judge was quite clear and he asked relevant questions. Obiter Dicta: Parliament can make law to repeal existing law and then years later, they can reestablish it. If the new law is broader than the first, it is only binding to the degree that it reflects the old law.