Neutral Citation No. [2010] NICC 42 | *Ref:* **McCL7992**

*Judgment: approved by the Court for handing down (subject to editorial corrections)** | *Delivered:* **29/09/10**

IN THE CROWN COURT IN NORTHERN IRELAND

_____

THE QUEEN

–v-

MARVIN CANNING

_____

RULING – NO CASE TO ANSWER
[WITH ADDENDUM]

_____

McCLOSKEY J

I INTRODUCTION

[1] The prosecution case having closed, this ruling determines an application by the Defendant for a verdict of not guilty, at this stage, on the ground that he has no case to answer.

[2] The Defendant is charged with two counts of kidnapping; two counts of assault/unlawful and injurious imprisonment; two counts of inflicting grievous bodily harm with intent; and one count of possession of a firearm with intent to commit an indictable offence. The injured parties are described in the indictment as BC and LD. The dates specified in the indictment are between 23rd and 25th April 2007. The outline in the ensuing paragraphs summarises the opening statement of Mr. Hunter QC, who appeared with Mr. Russell on behalf of the prosecution.

II THE PROSECUTION CASE

[3] BC and LD are described as cohabiting partners who, in April 2007, resided together in a town in County Westmeath, Republic of Ireland which I shall hereinafter refer to as 'X'. BC operated a business in which LD performed various secretarial and administrative duties. During the course of 23rd April 2007 (a

Monday), BC spent a number of hours in the company of an acquaintance in a public house in X, drinking pints of beer. LD was also in their company for a period, drinking coffee. They had some suspicions about the conduct of two strangers who were present. LD went home first, followed by BC. Later, when the front doorbell rang, LD responded and was confronted by five or six men, who burst in. They attacked and injured her. BC was similarly attacked and injured, more seriously. There were shouts of "*Where's the €170,000? …*".

[4] A bag was placed over BC's head and his hands were tied behind his back. While LD lay face down on a bed, some ransacking of the premises occurred. Both were then led into a white van, which then travelled the long distance to Derry. At this second location, they were escorted into a house and separated. Once again, LD was obliged to lie face down on a mattress. Meanwhile, BC was interrogated and assaulted in another room. He was questioned about his business and money. It was represented that he was talking to "*the IRA*". Both captives were forced to undress and don a boiler suit of sorts. They were removed from the premises into the same vehicle and driven to a third location. The vehicle was then driven away, while two of their captors remained with them. BC was required to remove his boiler suit, duly replaced by another, while the sleeves of LD's attire were ripped off. While the captives were physically separated, BC, lying on the grass, was shot in both ankles. LD did not witness this, but saw two men running away. She was able to alert local residents, as a result of which police and ambulance personnel attended shortly before 5.00am on 24th April 2007. The location was a street in the Creggan area of Derry to which I shall hereinafter refer as 'Y'. LD sustained relatively minor injuries. BC was more seriously injured and, in particular, his left eye was damaged to the extent that a loss of sight has ensued.

[5] The prosecution case is based substantially on the identification of the Defendant and recognition of his voice by the two injured parties. In this respect, the following are the central ingredients of the prosecution case:

(a) Both injured parties had become acquainted with the Defendant some time previously.

(b) BC had conducted three meetings with the Defendant (amongst others) during the previous year.

(c) LD had attended two of these meetings.

(d) Both injured parties were familiar with the Defendant's appearance and his voice.

(e) BC had spoken to the Defendant during the three meetings in question and had also spoken to him numerous times on the telephone.

(f) BC recognised the Defendant, fleetingly, during the first phase of the relevant events at the injured parties' home in X.

(g) BC also recognised the Defendant's voice during this initial phase.

(h) BC heard the Defendant's voice in the van during the journey between X and Londonderry.

(i) On 18th July 2007, during a video film identification procedure, BC identified the Defendant as "*a person who took me from my home address in a van to an unknown address in Londonderry, Northern Ireland*".

(j) LD was also familiar with the Defendant's appearance and voice through attending two of the said meetings and certain telephone conversations with him.

(k) During the same journey by road, LD saw the Defendant get into the vehicle.

(l) LD further recognised the Defendant's voice during a telephone conversation which unfolded in the course of the journey.

(m) LD also identified the Defendant by his voice during the events at the second location in Londonderry.

(n) On 25th April 2007, during an identification procedure, LD identified the Defendant as "*a person who on 23rd April 2007 at* [their home in X] *forced entry and took me and my partner to Londonderry in a van*".

[6] The other elements of the prosecution case against the Defendant were outlined to the court as the following:

(a) On 24th April 2007, in the course of a search of the Defendant's home in Londonderry, a cord style jacket was recovered from a washing machine, as a washed item. LD was shown this item and recognised it as something worn by one of the men in the back of the van.

(b) In interview, the Defendant accepted that he knew one MGH, who had been in his house in the early hours of 24th April 2007. A pair of jeans attributable to MGH were forensically examined. They had blood staining, three samples whereof gave a mixed DNA profile with partial major and minor indications. Both the partial minor profiles matched BC.

(c) On 2nd May 2007, a search of the residence of SW in County Sligo uncovered a silver Ford Transit van, which had blood staining on a

rubber seal of the side door. Forensic examination established that this was BC's blood.

[7] It is the prosecution case that the Defendant acted as part of a joint enterprise, on his own behalf and that of others not before the court, to perpetrate each of the alleged offences. With regard to those offences committed in the Republic of Ireland, it is contended that this court has jurisdiction by virtue of Section 1 of the Criminal Jurisdiction Act 1975, which provides:

> *"Criminal liability for offences in the Republic of Ireland*
> *1. - (1) Any act or omission which-*
> *(a) takes place in the Republic of Ireland, and*
> *(b) would, if taking place in Northern Ireland, constitute an offence described in Part I of Schedule 1 to this Act,*
> *shall, for the purposes of the law of Northern Ireland, constitute that offence.*
> *(2) The law applied by subsection (1) above shall be construed in accordance with Part II of the said Schedule 1.*
> *(3) In this Act "extra-territorial offence" means-*
> *(a) any offence under subsection (1) above (read with Schedule 1 [$ S. Sch.1]),*
> *(b) any offence in the Republic of Ireland under section 2 of this Act,*
> *(c) any offence under section 3 of this Act,*
> *(d) any offence defined as an extra-territorial offence by section 6(3) of this Act.*
> *(4) Liability for an extra-territorial offence (as defined by subsection (3) above) attaches irrespective of the nationality of the offender, and notwithstanding the provisions of section 3 of the British Nationality Act 1948 (limitation of criminal liability of certain persons who are not citizens of the United Kingdom and Colonies).*
> *(5) Proceedings for an extra-territorial offence may be taken, and the offence may for the purposes of those proceedings be treated as having been committed, in any place in Northern Ireland."*

This jurisdictional basis is not challenged on behalf of the Defendant.

[8] For present purposes, it is not necessary to rehearse *in extenso* the evidence adduced by the prosecution. Rather, it suffices to indicate that I have reviewed this thoroughly in its totality.

III GOVERNING PRINCIPLES

[9] The principles which govern the determination of this application are well established and uncontroversial. The decision of the Court of Appeal in ***Chief***

Constable of PSNI –v- Lo [2006] NICA 3 is especially apposite in the present context, which is that of a non-jury trial. In that case, the applicable principles were formulated by the Lord Chief Justice in the following terms:

> *"**[13]** In our judgment the exercise on which a magistrate or judge sitting without a jury must embark in order to decide that the case should not be allowed to proceed involves precisely the same type of approach as that suggested by Lord Lane in the second limb of Galbraith but with the modification that the judge is not required to assess whether a properly directed jury could not properly convict on the evidence as it stood at the time that an application for a direction was made to him because, being in effect the jury, the judge can address that issue in terms of whether he could ever be convinced of the accused's guilt. Where there is evidence against the accused, the only basis on which a judge could stop the trial at the direction stage is where he had concluded that the evidence was so discredited or so intrinsically weak that it could not properly support a conviction. It is confined to those exceptional cases where the judge can say, as did Lord Lowry in Hassan, that there was no possibility of his being convinced to the requisite standard by the evidence given for the prosecution.*
>
> ***[14]** The proper approach of a judge or magistrate sitting without a jury does not, therefore, involve the application of a different test from that of the second limb in Galbraith. The exercise that the judge must engage in is the same, suitably adjusted to reflect the fact that he is the tribunal of fact. It is important to note that the judge should not ask himself the question, at the close of the prosecution case, 'do I have a reasonable doubt?'. The question that he should ask is whether he is convinced that there are no circumstances in which he could properly convict. Where evidence of the offence charged has been given, the judge could only reach that conclusion where the evidence was so weak or so discredited that it could not conceivably support a guilty verdict."*

[10] In ***The Queen –v- Courtney*** [2007] NICA 6, the Court of Appeal reiterated that the decision in ***The Queen -v- Galbraith*** [1981] 73 Cr. App. R 124 remains the *locus classicus*:

> *"[18] The judgment in Galbraith remains the locus classicus for the exposition of the principles to be applied in determining whether a direction of no case to answer should be made. This is how Lord Lane CJ described it: -*

> *'How then should the judge approach a submission of 'no case'? (1) If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty. The judge will of course stop the case. (2) The difficulty arises where there is some evidence but it is of a tenuous character, for example because of inherent weakness or vagueness or because it is inconsistent with other evidence. (a) Where the judge comes to the conclusion that the Crown's evidence, taken at its highest, is such that a jury properly directed could not properly convict on it, it is his duty, on a submission being made, to stop the case. (b) Where however the Crown's evidence is such that its strength or weakness depends on the view to be taken of a witness's reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence on which a jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury'."*

The judgment in ***Courtney*** also contains certain material pronouncements on the topic of circumstantial evidence:

> *"**[20]** Where, as in this case, the prosecution rely on circumstantial evidence to establish the defendant's guilt, it is well established that a particular approach to the evaluation of the evidence is required. This is perhaps still best encapsulated in the well known passage from the judgment of Pollock CB in R v Exall [1866] 4 F&F 922 at 928; 176 ER 850 at 853 (endorsed in this jurisdiction by the Court of Appeal in R v Meehan No 2 [1991] 6 NIJB 1): -*
>
> > *'What the jury has to consider in each case is, what is the fair inference to be drawn from all the circumstances before them, and whether they believe the account given by the prisoner is, under the circumstances, reasonable and probable or otherwise . . . Thus it is that all the circumstances must be considered together. It has been said that circumstantial evidence is to be considered*

> *as a chain, and each piece of evidence as a link in the chain, but that is not so, for then, if any one link broke, the chain would fall. It is more likely the case of a rope composed of several cords. One strand of the cord might be insufficient to sustain the weight, but three stranded together may be quite of sufficient strength. Thus it may be in circumstantial evidence -- there may be a combination of circumstances, no one of which would raise a reasonable conviction, or more than a mere suspicion; but the whole, taken together, may create a strong conclusion of guilt, that is, with as much certainty as human affairs can require or admit of'.".*

The Lord Chief Justice revisited this theme at a later stage of his judgment:

> *"**[31]** We can quite understand how the judge came to focus on the evidence of the McCulloughs and Mr Hagan since the claim that they made was the centrepiece of the Crown case. But we consider that he was wrong to isolate this evidence from the remainder of the Crown case.* ***In a case depending on circumstantial evidence, it is essential that the evidence be dealt with as a whole because it is the overall strength or weakness of the complete case rather than the frailties or potency of individual elements by which it must be judged. A globalised approach is required not only to test the overall strength of the case but also to obtain an appropriate insight into the interdependence of the various elements of the prosecution case.****"*

[My emphasis].

[11] The special *corpus* of principles in play where the prosecution case is based wholly or partly on visual identification and/or voice recognition evidence must also be considered. The central thrust of the well known decision of ***R –v- Turnbull*** [1977] QB 224 is based on the court's acknowledgement of the real risk of miscarriages of justice in visual identification cases and can be distilled from the following passages in the judgment of Lord Widgery CJ:

> "[P. 228] *First, whenever the case against an accused depends wholly or substantially on the correctness of one or*

more identifications of the accused which the defence alleges to be mistaken, the judge should warn the jury of the special need for caution before convicting the accused in reliance on the correctness of the identification or identifications. In addition he should instruct them as to the reason for the need for such a warning and should make some reference to the possibility that a mistaken witness can be a convincing one and that a number of such witnesses can all be mistaken …

Secondly, the judge should direct the jury to examine closely the circumstances in which the identification by each witness came to be made …

Recognition may be more reliable than identification of a stranger; but even when the witness is purporting to recognise someone whom he knows, the jury should be reminded that mistakes in recognition of close relatives and friends are sometimes made. All these matters go to the quality of the identification evidence …

[P. 230] *When, in the judgment of the trial judge, the quality of the identifying evidence is poor,* ***as for example when it depends solely on a fleeting glance or on a longer observation made in difficult conditions,*** *the situation is very different. The judge should then withdraw the case from the jury and direct an acquittal unless there is other evidence which goes to support the correctness of the identification …*

The trial judge should identify to the jury the evidence which he adjudges is capable of supporting the evidence of identification. If there is any evidence or circumstances which the jury might think was supporting when it did not have this quality, the judge should say so."

The ***Turnbull*** guidelines were formulated in the context of visual identification evidence.

[12] The court must also consider the guidance available in relation to partial, or qualified, identification evidence. In ***The Queen –v- George*** [2003] Crim. LR 282 a question arose about the evidence which could properly be adduced by the prosecution from a witness to a crime who had failed to make a positive identification of the accused at an identification parade. Having highlighted the danger of erroneous identity and/or inaccurate portrayal of a non-identification, Lord Woolf stated, at paragraph [34]:

> *"However, there are at least two situations where a qualified identification may, in appropriate circumstances, be both relevant and probative. First, where altogether the weight of the evidence will still be less than a positive identification, it supports or at least is consistent with other evidence that indicates the defendant committed the crime with which he is charged. Secondly, the explanation for a non or qualified identification may help to place the non or qualified identification in its proper context, and so, for example, show that the other evidence given by the witness may still be correct. Otherwise, a non or qualified identification could be used to attack the credibility of other evidence given by a witness when the explanation for this may show that such an attack is unjustified. In each case it will be for the judge to decide whether the evidence is more prejudicial than relevant and probative bearing in mind the importance of protecting the position of the defendant against unfairness. In this case, as we shall see, part of the case for the prosecution is based on the pattern of identification evidence including the build, the complexion and clothing which the appellant was wearing. Subject to the jury receiving appropriate warnings which were given in this case, the general evidence of the witnesses who saw a man who the prosecution say was the appellant was highly probative."*

In later passages, the judgment focussed particularly on what was termed "*the risk of contamination*":

> *"37. In our opinion this evidence was at the borderline of proper admissibility having regard to the risk of contamination. We accept Mr Spens's criticism both of the car journey on 6 October and the conversation with Temple on 7 October. These were undoubtedly matters which went to the issue of reliability of Temple's late identification. However, we are not prepared to accept that the judge's decision to admit the evidence for evaluation by the jury was wrong. Our reason is, as it was the judge's, that there was available to the defence all the material needed to examine the reliability of Temple's evidence. As we have observed, there were various conclusions to which the jury could have been driven by the evidence. The defence was not in the position of being deprived of the opportunity effectively to explore the reliability of the evidence, as contemplated by Lord Lane CJ in Quinn……In our view, the judge did give to the jury explicit directions about the caution which they must exercise before relying about the identification*

evidence of any of the witnesses, and, in the case of Temple, the particular issue of unreliability occasioned by after-acquired knowledge……..

42. This was a single issue case in which counsel for the appellant took infinite care to explain to the jury why the identification evidence may be unreliable. Indeed Mr Spens was explaining why there was no case which required an answer from the appellant who elected not to give evidence. This was not a case which involved several different compartments of circumstantial evidence requiring the judge to re-focus the jury's attention upon issues relevant to identification. The whole case was about identification and the risks of error, contamination and mistaken recollection. The judge endorsed counsel's approach to the identification issue and reminded them of the central features of the evidence of Halton and Temple which they should consider as weaknesses. The fact that the jury did not receive a more emphatic endorsement of weaknesses from the judge does not, in our view, undermine the safety of the jury's verdict, since the question whether the identification evidence was contaminated was an issue for the jury to evaluate as the judge told them. If they concluded that there was a real risk of contamination, it was common ground that the jury should exercise extreme caution."

[13] The Court of Appeal has also provided guidance on the discrete issue of "mutual" or "support" identification evidence. In "***The Queen –v- Weeder*** [1980] 71 Cr. App. R 228, the Lord Chief Justice stated:

"In our judgment the position is a simple one and the guidance provided by this Court in Turnbull (supra) fully covers the position:

(1) When the quality of the identifying evidence is poor the judge should withdraw the case from the jury and direct an acquittal unless there is other evidence which goes to support the correctness of the identification. The identification evidence can be poor, even though it is given by a number of witnesses. They may all have had only the opportunity of a fleeting glance or a longer observation made in difficult conditions, e.g. the occupants of a bus who observed the incident at night as they drove past.

(2) Where the quality of the identification evidence is such that the jury can be safely left to assess its value, even though there is no other evidence to support it, then the trial Judge is fully entitled, if so minded, to direct the jury that an identification by one witness can constitute support for the identification by another, provided that he warns them in

clear terms that even a number of honest witnesses can all be mistaken."

Belonging to the same sphere is the decision in ***The Queen –v- Tyler and Others*** [1993] 96 Cr. App. R 332, where the identification evidence incriminating the accused was provided by two police officers based on observations made in difficult conditions. Both the argument advanced on behalf of the accused and the terms of its rejection by the Court of Appeal are noteworthy (at p. 339):

> *"Before the trial judge, the prosecution had conceded that the circumstances were difficult. Furthermore, argues Mr. Jobling, the evidence of one police officer afforded no support for the identification of Tyler by the other. The features which rendered the identification of poor quality were the same for both of them, as their observations were made from the same position.*
> *This Court is unable to accept these arguments. There can be a good identification even when the conditions are difficult. The fact that two witnesses are observing the same event does not, so to speak, merge their evidence into one. There are still two separate and independent identifications, provided they are honestly made, as the jury must have accepted they were. In those circumstances, the fact that their observation was made from the same place does not prevent the identification by one being supported by the other. Putting it shortly, an identification of a suspect by two different witnesses carries more weight than one. If there had been only one witness to the incident, the position may have been different, given the circumstances, but with the evidence of two available to him, the judge was not under a duty to withdraw the case from the jury.*"

[14] In ***The Queen –v- Flynn and St. John*** [2008] 2 Cr. App. R 20, the Court of Appeal highlighted the dangers inherent in voice recognition evidence. Gage LJ, having reviewed the evidence of an expert, stated:

> *"[16] In general terms the expert evidence before us demonstrates the following:*
>
> - *(1) Identification of a suspect by voice recognition is more difficult than visual identification.*
> - *(2) Identification by voice recognition is likely to be more reliable when carried out by experts using acoustic and spectrographic techniques as well as sophisticated auditory techniques, than lay listener identification.*
> - *(3) The ability of a lay listener correctly to identify voices is subject to a number of variables. There is at present little*

research about the effect of variability but the following factors are relevant: (i) the quality of the recording of the disputed voice or voices;

- *(ii) the gap in time between the listener hearing the known voice and his attempt to recognise the disputed voice;*
- *(iii) the ability of the individual lay listener to identify voices in general. Research shows that the ability of an individual to identify voices varies from person to person.*
- *(iv) the nature and duration of the speech which is sought to be identified is important. Obviously, some voices are more distinctive than others and the longer the sample of speech the better the prospect of identification.*
- *(v) the greater the familiarity of the listener with the known voice the better his or her chance of accurately identifying a disputed voice.*

However, research shows that a confident recognition by a lay listener of a familiar voice may nevertheless be wrong."

[15] The phenomenon of voice recognition evidence features also in the recent decision of the English Court of Appeal in ***R –v- Hussain and Others*** [2010] EWCA. Crim 1327, where the defence case included the evidence of a leading expert in voice analysis. Pitchford LJ, giving the judgment of the court, recalled the decision in ***Flynn and St. John*** (*supra*). The learned Lord Justice highlighted that, in his summing up, the trial judge had given appropriate directions about the need for caution and had summarised the evidence of the expert emphasizing the advantages of scientific analysis of voice samples over 'lay listener voice recognition'. In particular, he cautioned that "*… even the most competent recognition of a voice by a lay listener may nevertheless be wrong*" [p. 47]. The challenge to the safety of the jury's guilty verdict was dismissed.

IV CONSIDERATIONS AND CONCLUSIONS

[16] The centrepiece of the defence application is an attack on the quality, consistency and reliability of the evidence of BC and LD. It rehearses the interaction and communications between both witnesses and the police in the early stages; the accounts later provided by them when interviewed by the police; and the answers given by them to a series of questions during the trial. The defence submissions assert a series of incurable frailties, discrepancies and inconsistencies. These submissions relate to the evidence of both visual identification and voice identification. The written submissions crystallise in the following way:

> "*The present case is one which turns upon identification evidence and* [this] *is weak and is unsupported by any other evidence …*
>
> *Neither the 'glimpses' nor the purported voice recognition could sustain a credible identification. Apart from the poor quality of the identifications, they are riddled with internal and external inconsistencies in any event. In the circumstances the evidence of identification is manifestly unreliable …*
>
> *There is simply no evidence of a credible nature to link the Defendant to this crime and accordingly the court should dismiss the charges.*"
>
> The court's attention is also directed to the written evidence of Garda McDonnell, which was read by agreement.

[17] The replying submissions of Mr. Hunter QC and Mr. Russell highlight:

(a) The evidence of BC and LD concerning their prior familiarity with the Defendant.

(b) The visual identification and voice identification evidence incriminating the Defendant given by both witnesses.

(c) LD's evidence that she recognised a cord style jacket recovered from a washing machine in the Defendant's house, coupled with the Defendant's acceptance in interviews that this was his.

(d) The forensic evidence to the effect that the jeans worn by MGH, a person whom the Defendant accepted (during interviews) was present in his home during the night/morning of 23rd/24th April 2007, had two bloodstains attributed to BC.

(e) The cross-examination of BC and LD to the effect that the Defendant had attended two meetings in their presence in August/September 2006, contrasted with the conflicting denials of any such previous contact advanced by the Defendant during interviews.

(f) The link which can be forged between the aforementioned meetings and the evident motive for the offences.

[18] The arguments of the prosecution also contrast the "spontaneous" voice recognition in the present case with evidence based on listening to recordings or so-called "lay listener evidence". Further, the court is reminded of the applicability of

the decision in ***The Queen –v- Lucas*** [1981] QB 720, where it was held that in cases where the prosecution rely on the asserted lies of a Defendant as evidence supportive of his guilt, the tribunal of fact must be satisfied of three things viz. (a) the lie was deliberate, (b) it relates to a material issue and (c) there is no innocent explanation for it. Hence, in directing the jury, it is incumbent on the trial judge to remind them that a person might tell a lie, for example, to fortify a just cause or motivated by shame or a design to conceal discreditable or embarrassing behaviour (the so-called "***Lucas***" direction).

[19] I consider that the various strands of evidence highlighted on behalf of the prosecution constitute evidence against the Defendant which is capable of convicting him to the criminal standard. Applying the governing principles, it is open to me to accede to the defence application only if I conclude that the evidence, considered both in its individual components and as a whole, could not properly support a conviction. Such a conclusion is permissible only in those exceptional cases where, at this stage of the trial, the judge is satisfied that there is no possibility of being convinced to the criminal standard on the basis of the evidence adduced. It is trite to observe that the hurdle confronting any Defendant in this context is an elevated one. I make the further observation that the Defendant's submissions concentrate almost exclusively on the evidence of BC and LD, to the exclusion of the other elements of the prosecution case.

[20] I conclude that the Defendant's application fails to overcome the applicable threshold and must, therefore, be dismissed.

[21] I shall now proceed to consider the Defendant's freestanding application for an order staying the indictment on the ground of alleged abuse of process.

ADDENDUM

[22] Pursuant to the ruling of the court given on 4th November 2010 [McCL7903], BC and LD were recalled. They were cross-examined further about two basic matters:

(a) The repeated description of their attackers and captors as "*six armed and masked men*" in the written statements of Garda McDonnell and two related Garda records.

(b) The description in an excerpt from PT's witness statement of certain alleged events at a hotel which I shall refer to as 'CW', near Dublin on the day preceding the abduction.

Given this development, I permitted renewal of the present application. The further submissions advanced focussed exclusively on the additional evidence of BC. I am conscious that the main focus of this application has at all times been the alleged

frailties and inconsistencies in the evidence of BC and LD. Having considered the extended evidence of both witnesses and the consequential further defence submissions, I adhere to the conclusion expressed in paragraph [20] above.