

CITATION: *Steven Flynn v Cassie Leeanne Wright [2019] NTLC027*

PARTIES: Steven FLYNN

V

Cassie Leeanne WRIGHT

TITLE OF COURT: LOCAL COURT

JURISDICTION: CRIMINAL

FILE NO(s): 21815408

DELIVERED ON: 4 October 2019

DELIVERED AT: DARWIN

HEARING DATE(s): 27-28 August 2019 and 5 and 10 September 2019

JUDGMENT OF: JUDGE NEILL

CATCHWORDS:

Stealing from employer – circumstantial evidence

REPRESENTATION:

Counsel:

Complainant: Ms K Benson

Defendant: Julia Ker – Legal Aid

Solicitors:

Complainant: DPP

Defendant: NTLAC

Judgment category classification:	C
Judgment ID number:	[2019] NTLC 027
Number of paragraphs:	62

IN THE LOCAL COURT
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 21815408

BETWEEN

Steven FLYNN

Complainant

AND

Cassie Leeanne WRIGHT

Defendant

REASONS FOR JUDGMENT

(Delivered 4 October 2019)

JUDGE NEILL

1. The Defendant has been charged with 10 counts of stealing, the first on or about 21 October 2016 and the 10th and last on or about 19 February 2017. The hearing ran before me for two days, 27 and 28 August 2019, and oral submissions took parts of two further days on 5 and 10 September 2019.
2. At all relevant times the Defendant was employed as store manager in the Darwin store of retail cosmetics company Napoleon Perdis at Casuarina. The prosecution alleges that on 10 separate occasions the Defendant retained the store's daily cash takings for her own benefit instead of banking them for the store.
3. The prosecution case against the Defendant is entirely circumstantial. That is, there was no evidence of any direct observation on any occasion of the Defendant taking cash from the store for herself and there was no evidence that the Defendant had any unexplained money in her possession or in any bank account controlled by her.

Instead, the evidence before the Court identified the Defendant's role and responsibilities as store manager, the system in place at the store for the recording, tallying, bagging and banking of the store's daily cash takings, records completed by the Defendant and other store employees relevant to that system, the ANZ Bank's records of the Darwin store's cash deposits over the relevant period, and records of staff attendances at the store. I remind myself of the observation by the High Court of Australia in *Doney v The Queen* (1990) 171 CLR 207 at 211 as follows:

“Circumstantial evidence is evidence which proves or tends to prove a fact or set of facts from which the fact to be proved may be inferred. Circumstantial evidence can prove a fact beyond reasonable doubt only if all other reasonable hypotheses are excluded”.

4. Because there are 10 discrete allegations of stealing of the same or similar nature over a four month period, there was the possibility that a course of conduct in respect of one or more charges, once found proven, might be relied on to support a finding of guilt in all or some of the remaining charges. However, in final submissions on 10 September 2019 Ms Benson for the prosecution made it clear that this was not relied upon. The prosecution had not given notice to the defence as required, or at all, for either tendency evidence as identified in section 97, or coincidence evidence as identified in section 98, of the *Evidence (National Uniform Legislation) Act*. Accordingly, neither category of evidence was admissible in this case to prove either any relevant tendency or the improbability of any coincidence.
5. On the evidence before me it appears that the head office of Napoleon Perdis in Sydney had become aware of some irregularity in the operation of its Darwin store and it carried out investigations in February 2017. There was no specific evidence before me as to precisely what irregularity was noticed, by whom or how it had come to the attention of the head office.
6. There was evidence that the cash takings of the Darwin store of Napoleon Perdis were always banked with the Casuarina branch of the ANZ Bank, and I so find. I

had in evidence before me the relevant records of the ANZ Bank for the whole of the relevant period. These records show the deposits into that bank by the Darwin store of Napoleon Perdis. The code identifying deposits by the Darwin store of Napoleon Perdis was an agreed fact in evidence before me – exhibit P11. From this, I am able to identify all cash deposits made on behalf of the Darwin store of Napoleon Perdis over or shortly after the relevant period. I have been able to satisfy myself by perusing these records, and I find, that no cash deposits on behalf of the Darwin store of Napoleon Perdis were made to the ANZ Bank of the precise amounts alleged stolen in counts 1 to 10 inclusive. In addition, I find that no similar amounts, and no amounts which might possibly represent totals of two or more of those allegedly stolen amounts, were deposited over or shortly after the relevant period.

7. On the evidence before me I am satisfied and I find that the Casuarina branch of the ANZ Bank was not open for business on Saturdays or Sundays or on public holidays.
8. I had evidence before me of the staff rosters at the Darwin store of Napoleon Perdis store relevantly covering the period from Sunday 16 October 2016 through to and including Saturday 14 January 2017 but not thereafter. This means there was no roster evidence of which employees of Napoleon Perdis were working and in what shifts on the dates of counts 6, 7, 8, 9 and 10, because those five counts all allege offending after 14 January 2017. However, I had separate evidence before me of which staff members conducted transactions at the Darwin store, and therefore which were present at the store at the time of each transaction, for the relevant dates for all 10 counts.
9. The rosters show that the Darwin store was usually open for trading from 9:00am to 9:00pm from Monday to Saturday and from 10:00am to 2:00pm on Sunday. There were shorter trading hours sometimes earlier in the week and on some public holidays. Staff were usually rostered to work either from 9:00am to 5:30pm or from 12:00 noon to 9:00pm. The rosters do not show any instances where any staff, including the Defendant, were rostered to work longer than a nine hour shift.

10. The “separate evidence” referred to above was in the form of a document entitled "Tender Listing". The evidence before me, and I find, was that this document recorded every financial transaction at the Darwin store on each day, with the code name of the staff member who conducted the transaction entered next to each transaction along with the time of the transaction. I heard live evidence from five previous employees of the Darwin store and I am satisfied that I can identify each of those five former staff members, and also the Defendant, by each person's code name entered on the Tender Listings. The code in each case is created by the first three letters of the staff member's surname followed by the first two letters of their given name, with some slight variations. I find that the Defendant's code name where entered on these documents was WRICA. There was evidence of the names of some other employees of the Darwin store over the relevant period who did not give evidence before me and I am satisfied I can identify those other staff members by their codenames where they appear on a Tender Listing for any particular date.

11. The evidence of the system in place at the Darwin store of Napoleon Perdis for recording, tallying, bagging and banking daily cash takings was that cash transactions for each day were electronically entered through the till and appeared on that day’s electronically generated Tender Listing. Additionally, a staff member manually counted the cash takings at the end of the day and manually wrote that sum in a physical store diary known as a Counter Diary in a field headed "Today's Banking Register" – the first field. A two-part sticker was on the ANZ Bank cash deposit bags provided by the bank and used by the store. This sticker was entitled “Customer Receipt”. Both parts of this sticker were required to be manually filled out with the date the cash was placed in the bag and the amounts in notes and coins was written in, and then the total. The bag was then sealed and it could not be opened again without tearing or otherwise damaging the bag. One part of the Customer Receipt sticker was then peeled off the bag and stuck on the page for that day of the Counter Diary, creating a second field on that page. The bag was then placed in the store’s safe overnight, or until the next banking day if that was not the next day. The evidence was that all staff had access to that safe. On each page of the Counter Diary there was a third field with the heading "Previous Day/s Banking

Register". A store staff member, commonly but not always the Defendant, the next banking day manually entered the details required in the third field before physically carrying the cash takings in the special, sealed bank bag to the ANZ Bank branch at Casuarina. The banking was to be completed in the morning before 1:00pm every weekday – all this appears in the document headed “Banking Procedure Kit” being exhibit P3, and/or in the evidence in chief of the first witness Jacklyne Mourgelakis. I make formal findings of fact in respect of all the foregoing

12. Formal Position Descriptions were tendered in evidence showing the duties of the Defendant as Store Manager, and the duties of the Store Manager in Training – effectively the second in charge at the store. These identify precisely the same duties for both positions in respect of cash handling and banking. They include the obligation to “Abide by company policies for cash handling and banking. Ensure Store Diary Float, EOD (end of day) Cash up and Till Totals is completed daily”. The roster evidence however shows that the Defendant was not always rostered on at the end of the day; sometimes neither the Defendant nor the Store Manager in Training was rostered on at the end of the day and therefore other staff by default would have had to attend to the end of day cash handling. Staff witnesses gave evidence that sometimes, but not often, they had attended to counting the cash takings, filling out the first field, placing the cash in the bank bag and sealing it, filling out the second field, placing the bag in the safe overnight and taking the bag to the bank the next banking day, although not all of these duties on each occasion, and I so find.
13. The name “Cassie” and a signature are handwritten and appear in the first and/or third fields on a number of Counter Diary pages over the period 14 August 2016 to 25 February 2017, tendered in evidence before me. I also have in evidence a copy of the Defendant’s contract of employment with Napoleon Perdis Cosmetics Pty Ltd signed by her and with her name “Cassie Wright” written by her on 20 May 2016. I am able to compare that name and signature handwritten by the Defendant with the handwritten name “Cassie” and the signature where these appear singly and

together on the pages of the Counter Diary in evidence before me. The signatures and the name “Cassie” appear to me to have been written by the same hand.

14. Witnesses Kerri-Anne McLean and Caitlin Manning both worked with the Defendant at the store over all or part of the relevant period. They each gave evidence that they recognised the Defendant’s handwriting in the Counter Diary. There was no evidence before me in any way suggesting that any person had or might have forged the Defendant’s handwritten name or her signature where they appear in one or other of the first and third fields in any of the Counter Diary pages in evidence before me. I am satisfied and I find that where the name “Cassie” is handwritten and where the signature appears alone or with that name on many of the Counter Diary pages, these were written by the Defendant.
15. I am unable to arrive at the same level of satisfaction in respect of the handwriting which appears on the Customer Receipt stickers (the second field) affixed to pages of the Counter Diary in respect of the 10 charges against the Defendant. The Customer Receipt sticker does not require to have a name or a signature entered on it. It simply records a date and figures for the cash notes and coins, and a total. In the absence of expert handwriting evidence I have been unable to satisfy myself that these entries of handwritten numbers, or any of them, were made by the Defendant. I am satisfied in some instances that they were not made by the Defendant.
16. **COUNT 1** - This count alleges that on Friday 21 October 2016 the Defendant stole \$877, the property of Napoleon Perdis. The staff roster for Friday 21 October 2016 shows the Defendant was rostered to work from 9:00am to 5:30pm. The Tender Listing document for 21 October 2016 shows cash takings for the day of \$998. There was no explanation before me for the two different figures. That Tender Listing document shows three transaction entries recorded against the code name of the Defendant, each of them before 5:30pm. The roster shows two staff members, Sarah Buddle and Michelle Espinoza, as having been rostered to work from 12 noon to 9:00pm. Michelle Espinoza gave evidence at the hearing but Sarah Buddle did not. This all suggests that the Defendant ceased work at 5:30pm and was not at work at 9:00pm that day when the cash takings for the day were to be tallied and

bagged and recorded in accordance with the system. This conclusion is supported by the first field – Today’s Banking Register – having been filled in by “Michelle” for \$877 cash to be banked the following day. I am unable to determine whether the Customer Receipt for 21 October 2016 – the second field – was filled in by the same hand as filled in the first field. I am unable to determine whether that Customer Receipt was filled in by the Defendant’s hand.

17. The following day was a Saturday, 22 October 2016. No banking could be done that day, yet the Previous day/s Banking Register – the third field – on the Counter Diary for Saturday, 22 October 2016 has been filled in by the Defendant with the amount of \$877, the team member name of “Cassie” and the Defendant’s signature, suggesting that cash takings for Friday, 21 October 2016 were banked on Saturday 22 October 2016. I note however that the last two lines in the third field being “Date Banked” and “Customer Reference Number/s” have been filled in in a different pen and possibly a different hand, saying that the banking took place on 24 October 2016. The roster shows that the Defendant was not rostered to work on Saturday, 22 October 2016. There is no Tender Listing document in evidence before me for 22 October 2016 to show whether any transactions were recorded against the Defendant’s codename on that day. The roster shows that the Defendant was at work on Monday, 24 October 2016 although I have no Tender Listing for Monday 24 October 2016 to confirm this by transactions recorded.
18. Accordingly, it is reasonably possible that the Defendant was not at work and so did not complete the third field on Saturday 22 October 2016 – it is possible she completed her part of it on Monday 24 October 2016 and it is possible that a second, unknown person completed the last part of that third field on that same date.
19. Accordingly, on the evidence in respect of count 1, it is reasonably possible that someone other than the Defendant tallied and bagged and recorded the cash takings at the end of the day on Friday, 21 October 2016 and then placed that bag, whether sealed or unsealed, in the store safe. It is reasonably possible that the Defendant was not at work and someone other than the Defendant had the opportunity to deal with that bag on Saturday, 22 October 2016. It is reasonably possible that two different

persons completed the third field – Previous day/s Banking Register – on the Counter Diary page for Saturday, 22 October 2016 but showing banking having taken place on Monday, 24 October 2016. It is reasonably possible that somebody other than the Defendant dealt with to the banking on Monday, 24 October 2016 and therefore that somebody other than the Defendant had the opportunity to steal that sum of \$877.

20. I cannot be satisfied of the Defendant's guilt beyond reasonable doubt. I find the Defendant NOT GUILTY of count 1.
21. **COUNT 2** - This count alleges that on Thursday, 22 December 2016 the Defendant stole \$2,000, the property of Napoleon Perdis. The staff roster for Thursday, 22 December 2016 shows the Defendant was rostered to work from 9:00am to 5:30pm. The Tender Listing for this day shows cash takings of \$2,000. It shows nine transaction entries recorded against the code name of the Defendant, one of them at 9:25am, another at 9:44am and a third at 10:06am, these three well before 12 noon. The last of them is recorded at 5:45pm. The roster shows two staff members, Kerri-Ann McLean and Celeste Green, as having been rostered between 12 noon and 9:00pm. Kerri-Ann McLean gave evidence at the hearing but Celeste Green did not. The Counter Diary for Thursday, 22 December 2016 shows the first field – Today's Banking Register – as having been completed by the Defendant. To my eye, both the written name and the signature appear to be in the Defendant's hand. It shows the second field – Customer Receipt – as having been completed on 22 December 2016 for \$2,000. Once again, I cannot be certain that the Customer Receipt has been completed in the same hand as the first field, and therefore I cannot be certain that it was, or was not, completed by the Defendant. The Counter Diary for the next day, Friday 23 December 2016, shows the third field – Previous day/s Banking Register – as having been completed by the Defendant, but the last two lines in the third field, being "Date Banked" and "Customer Reference Number/s", have not been completed at all. To my eye, both the written name and the signature appear to be in the Defendant's hand.

22. The staff roster for the next day, Friday 23 December 2016, shows that the Defendant was rostered to work from 12 noon to 9:00pm, which suggests she was not present at the Darwin store during most of the morning of that day, when according to the store system the banking was to be done. However, the Tender Listing document for 23 December 2016 shows 24 transaction entries recorded against the code name of the Defendant and 15 of these are recorded as having occurred at different times before 12 noon, the earliest at 9:11am. Accordingly, I conclude and find that the roster was incorrect and the Defendant was present at work on the morning of 23 December 2016, and that she was physically present and able to do the previous day's banking on that morning, as recorded on the third field – Previous day/s Banking Register – on 23 December 2016.
23. I consider the possibility that the Defendant did not work in the evening of 22 December 2016 after her last recorded transaction at 5:45pm and that she was not present for the end of day tallying, bagging and recording of cash moneys around 9:00pm on that date. However, this is inconsistent with her having completed the first field – Today's Banking Register – recording cash takings for 22 December 2016 of \$2,000 and writing and signing her name. There was no evidence before me suggesting the Defendant had ever completed that field when she had not in fact personally been involved, alone or together with another staff member, in the end of day tallying, bagging and recording. There was no evidence before me suggesting the Defendant or any other staff member had ever completed that field on a subsequent day rather than at the completion of the end of day cash process, or that that occurred on this occasion.
24. I consider the possibility that the Defendant did not personally attend to the banking on 23 December 2016. However, this is inconsistent with her having completed the third field – Previous day/s Banking Register – recording that she had attended to the banking on 23 December 2016 of \$2,000 and writing and signing her name. There was no evidence before me suggesting the Defendant had ever completed the third field – Previous day/s Banking Register – on a banking day, saying she

personally had attended to do the banking on that day when some other staff member had in fact physically attended to the banking that same day.

25. I conclude and find that the Defendant personally dealt either alone or together with another staff member with the end of day tallying, bagging and recording of the day's cash takings for 22 December 2016 in the amount of \$2,000, and that she personally dealt on 23 December 2016 with the previous day's banking of \$2,000 on the morning of that day. I find that no deposit of \$2,000 was recorded in the ANZ Bank records for 23 December 2016 or on any banking day for at least 14 days after that date.
26. Accordingly, there is no reasonable hypothesis consistent with the evidence which might explain the missing amount of \$2,000 which the Defendant recorded she personally deposited at the Casuarina branch of the ANZ Bank for the store on 23 December 2016, other than that she did not deposit the sealed bank bag and its contents of \$2,000.
27. I am satisfied beyond reasonable doubt that the Defendant retained the cash amount of \$2,000 for herself and I find the Defendant GUILTY of count 2.
28. **COUNT 3** - This count alleges that on Friday, 23 December 2016 the Defendant stole \$798.20, the property of Napoleon Perdis. The staff roster for that day shows the Defendant was rostered to work from 12 noon to 9:00pm. It shows two other staff – Eliza Connor and Celeste Green – rostered to work from 12 noon to 9:00pm that day. Neither of these staff members gave evidence at the hearing. The Tender Listing for this day however tells a different story, recording 24 transaction entries against the code name of the Defendant, with 15 of these recorded before 12 noon, the earliest being 9:10am, and the remaining nine recorded in the afternoon, with the latest recorded at 6:52pm. The Tender Listing for that day shows cash takings of \$798.20.
29. The first field – Today's Banking Register – records total cash to be banked of \$902 rather than \$798.20. There was no explanation for these different figures on the evidence before me. The first field records the name of the team member as

“Cassie” and it is signed. To my eye, both the name and the signature appear to be in the hand of the Defendant. The second field – Customer Receipt – is not placed on the page of the Counter Diary for 23 December 2016 - it appears on the following page for Saturday, 24 December 2016. It is dated 23 December 2016 and it shows a total of \$798.20. To my eye, it appears to have been written in a different hand from the Defendant’s hand.

30. The third field – Previous day/s Banking Register – has been filled out on the page of the Counter Diary for Saturday, 24 December 2016. However, it is filled out in the sum of \$902 rather than \$798.20, it bears the name “Cassie” and it appears to have been signed by the Defendant. The Date Banked line of this field shows 24 December 2016. I am satisfied this cannot be correct because 24 December 2016 was a Saturday. Indeed, the first day the bank was open for business after Friday, 23 December 2016 was Wednesday, 28 December 2016, because the intervening days were the weekend and then the public holidays for Christmas Day and Boxing Day.
31. On the basis of this evidence there is a reasonable possibility that both the Defendant and other staff dealt with the cash takings for the day at the end of 23 December 2016. If she was still at work at 9:00pm that day, then the entry in the second field – Customer Receipt – in a different hand from the Defendant’s raises the reasonable possibility that the tasks of tallying the cash takings for 23 December 2016, bagging them and filling out the first and second fields on that day’s page of the Counter Diary were completed by more than one person – these could have been the Defendant and another, presumably either Eliza Connor or Celeste Green.
32. Further on the basis of this evidence, there is a reasonable possibility that the Defendant did not in fact attend personally to deposit the bank bag for Friday, 23 December 2016 on the next available banking day, which was Wednesday, 28 December 2016. The third field – Previous day/s Banking Register – on the pages of the Counter Diary on Wednesday, 28 December 2016 and Thursday, 29 December 2016 both appear to have been filled out by the Defendant but they relate to the two preceding public holidays, 26 and 27 December, and not back to Friday, 23 December 2016. The third field completed by the Defendant on the page for

Saturday, 24 December 2016 showing banking of \$902 on that date is clearly unreliable. The roster shows that the Defendant was rostered to be at work from 9:00am to 5:00pm on 24 December 2016. There is a reasonable possibility that the Defendant filled this field out on 24 December 2016 in anticipation of the banking being done on the next day the bank would be open. The result of all this is there is no unambiguous evidence in relation to the Defendant's role in personally banking either the \$902 or the charged \$798.20 on or about 28 December 2016.

33. All this raises the reasonable hypothesis that somebody other than the Defendant had the opportunity to interfere with the cash takings on 23 December 2016 either in the cash handling process at the end of that day, or on or around Wednesday, 28 December 2016 when the bank bag containing the cash takings for 23 December 2016 was supposed to be banked.
34. I cannot be satisfied beyond reasonable doubt of the Defendant's guilt and I find the Defendant NOT GUILTY of count 3.
35. **COUNT 4** - This count alleges that on Saturday, 24 December 2016 the Defendant stole \$1,181.20 the property of Napoleon Perdis. The staff roster for this day shows the Defendant was rostered to work from 9:00am to 5:00pm. It shows that all other staff were rostered to work the same shift, which seems reasonable given that this was Christmas Eve. The Tender Listing document for this day shows cash takings of \$1,181.80, not \$1,181.20 as charged, however this difference appears to be a mere typographical error in the charge. The Tender Listing document shows various entries next to the code name for the Defendant, confirming she did indeed work on this day. The roster identifies six other staff members as rostered to work that day. Four of these six other staff members – Sarah Buddle, Eliza Connor, Tyrah May and Celeste Green - did not give evidence before me.
36. The first field – Today's Banking Register – is not completed at all for 24 December 2016. The second field – Customer Receipt – showing the cash amount of \$1,181.80 and dated 24 December 2016, appears to have been stuck to the Counter Diary page for 26 December 2016, and to my eye the entry is in a different

hand from the Defendant's. There is no third field – Previous day/s Banking Register – on Sunday, 25 December 2016 and that page of the Counter Diary shows that the store was closed for Christmas Day. The third field for Monday, 26 December 2016 simply bears the entry “N/A” which I am satisfied means “not applicable”. There is no entry at all in the third field for Tuesday, 27 December 2016. The third field entries for each of Wednesday, 28 December 2016 and Thursday, 29 December 2016 have both been completed by the Defendant showing she attended to banking on 29 December 2016 on each occasion, and the amounts shown as banked relate to Tuesday, 27 December 2016 and Wednesday, 28 December 2016.

37. Accordingly, on the evidence in respect of count 4 it is reasonably possible that someone other than the Defendant, or the Defendant and another staff member jointly, attended to tallying, bagging and recording cash takings for 24 December 2016, and it is reasonably possible that someone other than the Defendant subsequently dealt with the banking of that day's cash takings, on or about 28 December 2016.
38. I cannot be satisfied of the Defendant's guilt beyond reasonable doubt. I find the Defendant NOT GUILTY of count 4.
39. **COUNT 5** - This count alleges that on Saturday, 31 December 2016 the Defendant stole \$870.60, the property of Napoleon Perdis. The staff roster for this day shows that the Defendant and six other staff members were rostered to work, all from 9:00am to 5:00pm because this was New Year's Eve. The Tender Listing document for this day confirms that the Defendant and six other staff members conducted transactions at work. At least two of these staff members did not give evidence at the hearing. The Tender Listing document shows cash takings for the day of \$870.60
40. The first field – Today's Banking Register – is not filled out for 31 December 2016. The second field – Customer Receipt – is filled out for \$870.60 on 31 December 2017 but to my eye it has been filled out in a different hand from the Defendant's.

There is no entry in the Counter Diary for Sunday, 1 January 2017 because that was New Year's Day. There is no third field – Previous day/s Banking Register – on Monday 2 January 2017 for 31 December 2016. There is no third field completed on subsequent days for 31 December 2016.

41. Accordingly, there is no evidence that the Defendant was directly involved at the end of business on 31 December 2016 in the tallying, bagging and recording of the cash takings for that day– those tasks could have been conducted by any one or more of the other six staff working with the Defendant. There is no evidence that the Defendant was personally involved on the next banking day 3 January 2017 with the banking of the cash takings for 31 December 2016.
42. I cannot be satisfied of the Defendant's guilt beyond reasonable doubt. I find the Defendant NOT GUILTY of count 5.
43. **COUNT 6** – This count alleges that on Friday, 20 January 2017 the Defendant stole \$289 the property of Napoleon Perdis. There was no staff roster in evidence for this date. The Tender Listing for this date records transaction entries by WRICA, the Defendant, at various times between 10:59am and 2:57pm. There are no later transactions recorded by the Defendant. It records the code names of three other staff members in addition to the Defendant. All three of these staff members gave evidence at the hearing. Transactions by other staff members are recorded as late as 8:26pm on this day. It records cash takings for the day of \$289.
44. The Counter Diary page for this date has neither the first field nor the second field completed but it does record the names of the "make up experts" on duty that day as including the name "Cass". I am satisfied that these entries establish that the Defendant was at work at the Darwin store on 20 January 2017, but not necessarily after 5:30pm.
45. The Counter Diary page for the following day, Saturday 21 January 2017, shows the field for "Previous Day/s Banking Register" as having been filled out by "Cassie", with a signature. I am satisfied and I find that this field was filled out and signed by the Defendant. This entry records that the sum of \$289 was banked by that person

on 21 January 2017. This cannot be correct because the evidence before me was that the bank was not open on any Saturday which includes Saturday, 21 January 2017 and I find that no banking of the previous day's cash takings was conducted on Saturday 21 January 2017. The store system required that the banking of the cash takings on Friday 20 January 2017 should have been done the next day the bank was open, which was Monday 23 January 2017. The Counter Diary for 23 January 2017 does not have the third field filled out for Friday, 20 January 2017, or at all.

46. There is no entry in the ANZ Bank records of a deposit of \$289 or any similar amount on 23 January 2017 or on any other day the bank was open that week.
47. It is reasonably possible that the Defendant worked the shift 9:00am to 5:30pm on 20 January 2017. It is reasonably possible that she was not present and therefore not involved on that day in the tallying, bagging or recording of that day's cash takings and that these tasks were conducted by one or more other staff members.
48. It is reasonably possible that the Defendant filled out the third field – Previous day/s Banking Register – on the Counter Diary entry for Saturday, 21 January 2017 on that date in anticipation of the banking actually being done the following Monday, 23 January 2017. There is no evidence that the Defendant was personally involved on 23 January 2017 in any banking of the \$289 cash takings from Friday, 20 January 2017.
49. I cannot be satisfied of the Defendant's guilt beyond reasonable doubt. I find the Defendant NOT GUILTY of count 6.
50. **COUNT 7** – This count alleges that on Sunday, 22 January 2017 the Defendant stole \$128, the property of Napoleon Perdis. There was no staff roster in evidence for this date. The Tender Listing document for this date records no transaction entries at all against the Defendant's code name. The Counter Diary for this day shows that the first field – Today's Banking Register – was not filled in. The second field – Customer Receipt – was filled in showing cash totalling \$128. Once again, it appears to me that the Customer Receipt was not filled in the Defendant's hand.

51. The third field – Previous day/s Banking Register – which should have been filled in on the Counter Diary entry for Monday, 23 January 2017 was not filled in.
52. Accordingly, in respect of this count there is no evidence that the Defendant was present at work on Sunday, 22 January 2017. There is no evidence that the Defendant had anything to do with tallying, bagging and/or recording the cash takings for that day. There is no evidence that the Defendant had anything to do with the banking on Monday, 23 January 2017 of any cash takings from Sunday, 22 January 2017.
53. I cannot be satisfied of the Defendant’s guilt beyond reasonable doubt. I find the Defendant NOT GUILTY of count 7.
54. **COUNT 8** – This count alleges that on Wednesday, 25 January 2017 the Defendant stole \$957, the property of Napoleon Perdis. There was no staff roster in evidence for this date. The Tender Listing document for this date showed cash takings of \$957. It records 10 transactions against the code name of the Defendant. It records only one other staff member conducting any transactions on that day. The latest transaction recorded against either the Defendant or the other staff member is 4:14pm, which accords with this day being the evening before the Australia Day holiday. The code name for that other staff member was VILSU and that person did not give evidence at the hearing.
55. The first field – Today’s Banking Register – is not filled out for this day. The second field – Customer Receipt – is filled out in the sum of \$957. I cannot however be certain from the writing that it was filled out by the Defendant.
56. The store was open and trading on Thursday, 26 January 2017, the Australia Day holiday, but the third field – Previous day/s Banking Register – was not filled out. This is not surprising given that no banking could be done on that public holiday. However, that third field was also not filled out for Friday, 27 January 2017 when the bank was next open.

57. It is likely that the Defendant as store manager with apparently only one other staff member on duty with her would personally have undertaken the tasks of tallying, bagging and recording the cash takings for 25 January 2017 but it is nevertheless reasonably possible that all or some of those tasks were performed by the other staff member.
58. There is no evidence linking the Defendant with the banking of the cash takings from Wednesday 25 January 2017 on the next banking day, Friday, 27 January 2017, or any other banking day. It is reasonably possible that some other staff member was involved with the disappearance of that sum of \$957.
59. I cannot be satisfied of the Defendant's guilt beyond reasonable doubt. I find the Defendant NOT GUILTY of count 8.
60. **COUNTS 9 AND 10** - Given the absence of any staff roster for counts 9 and 10 alleging offences respectively on 18 February 2017 and 19 February 2017, I look to the Tender Listing document for each of those dates. I note that the Tender Listing document for 18 February 2017 does not record that the Defendant conducted any transaction whatsoever at the Darwin store on that date. I note that the Tender Listing document for 19 February 2017 similarly does not record that the Defendant conducted any transaction whatsoever at the Darwin store on that date. There was no Tender Listing document in evidence before me for Monday 20 February 2017. This evidence does not conclusively establish that the Defendant was not present at work at the Darwin store on any of 18, 19 or 20 February 2017, but it is consistent with her not having been at work on those dates.
61. The only evidence in respect of the offences alleged in counts 9 and 10 is first, the record of each day's cash transactions in the Tender Listing and second, the absence of any ANZ Bank record of any subsequent deposit of the precise amounts or any similar amounts of those cash takings or the total of them. However, there is no evidence pointing to the Defendant's having been at work on any one of 18, 19 or 20 February 2017. There is no evidence linking her to counting, bagging or recording the cash takings on 18 or 19 February 2017 – the first field was not filled

out for either day. The evidence is that the ANZ Bank at Casuarina was not open on Saturdays or Sundays. There is no evidence of the Defendant's being involved in banking the cash takings for those two days on Monday 20 February 2017 or on any subsequent date – there is no third field filled out for Monday 20 February 2017. The second field - Customer Receipt - does appear for each of 18 and 19 February 2017 but I cannot be satisfied that either document was filled out by the Defendant rather than by some other staff member.

62. On the basis of this evidence I cannot be satisfied beyond reasonable doubt in respect of either of these counts and I find the Defendant NOT GUILTY of each of counts 9 and 10.

Dated this 4th day of October 2019



JOHN NEILL
LOCAL COURT JUDGE