

CITATION: *Andrew DUNNE v Graham ABBOTT [2020] NTL023*

PARTIES: ANDREW DUNNE

V

GRAHAM ABBOTT

TITLE OF COURT: LOCAL COURT

JURISDICTION: CRIMINAL

FILE NO(s): 21938390

DELIVERED ON: 1 July 2020

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HEARING DATE(s): 27 April 2020, 11 May 2020, 2 June 2020

JUDGMENT OF: JUDGE HUNTINGFORD

CATCHWORDS:

Criminal Code Act

Burke v The Queen (1997) 96 A Crim R 334

S Odgers, Uniform Evidence Law, 14th ed, Lawbook Co, 2019, pp 550-558

R v Amatto [2011] NSWDC 194, [7]-[8] and JP v DPP (NSW) [2015] NSWSC 1669, [26]

Doney v The Queen

REPRESENTATION:

Counsel:

Complainant: Ms Hayward

Defendant: Ms Bossard

Solicitors:

Complainant: DPP

Defendant: NAAJA

Judgment category classification:	B
Judgment ID number:	023
Number of paragraphs:	50

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

No. 21938390

BETWEEN

ANDREW DUNNE

Complainant

AND

GRAHAM ABBOTT

Defendant

REASONS FOR JUDGMENT

(Delivered 1 July 2020)

JUDGE HUNTINGFORD

1. The defendant, Graham Abbott is charged that on 31 August 2019 he:
 - a. unlawfully entered a building namely 14 Rieff Court, Alice Springs with an intent to commit an offence, namely stealing, and that entry involved two aggravating circumstances, firstly that the building was a dwelling house and, secondly, that the unlawful entry occurred at night, contrary to section 213 of the Criminal Code Act; and
 - b. stole alcohol and \$180 Australian Currency valued at a total of \$295, the property of Maxine and Glenn Baloban, contrary to Section 210 of the Criminal Code Act.
2. The defendant entered pleas of not guilty to the charges and the hearing commenced on 12 May 2020. The hearing concluded on 2 June 2020.
3. The prosecution case is that at about 10pm on 31 August 2019 the defendant entered the property at 14 Rieff Court, Alice Springs, through an unlocked kitchen door and stole 1 bottle of Bacardi, 1 bottle of gin and \$180 in cash.

4. The prosecution relied upon the evidence of three witnesses, Mr Glenn Baloban, resident of 14 Rieff Court, who was at home when the entry and theft occurred, Senior Constable Sarah Brooks, crime scene examiner, and Mr Stephen Crocker, Principal Examiner, Forensic Science Branch, NT Police. Neither Mr Baloban nor S/C Brooks were required for cross-examination and their statutory declarations were admitted into evidence as exhibits P1 and P2 respectively. Mr Crocker, who is a fingerprint expert, was cross-examined at some length.
5. Mr Baloban's unchallenged evidence is that around 10pm on 31 August 2019 he was in his room at 14 Rieff Court, a home in which he lives with his parents, Stephen and Maxine Baloban. He had the door closed and he was watching Netflix using earphones. Mr and Mrs Baloban were not at home. At about 10pm he heard dogs barking and, initially thinking it was his parents returning, he did not respond. After about two minutes, he opened the bedroom door and heard movement in the house, which sounded like people running off. He did not see anyone.
6. Mr Glenn Baloban inspected the house and noted that his mother's mobile phone had been moved and that the alcohol cabinet was open in the lounge area. He also saw that his mother's red purse and his own wallet had each been moved.
7. Upon searching the house, Mr Baloban did not find anyone present. He saw that a bottle of Bacardi and a bottle of gin were missing, together with \$180 in cash from his wallet.
8. Mr Baloban also noticed that a broom which had been outside had been placed in the kitchen. Outside he saw that the side gate, previously closed, was open. The rear kitchen door, which had been closed but unlocked, was also open. Mr Baloban reported the entry and theft to police.
9. Senior Constable Sarah Brooks, crime scene examiner, attended 14 Rieff Court on 1 September 2019. She provided a statutory declaration made 6 March 2020, which is exhibit P2 in this proceeding. S/C Brooks took photographs of the scene including the red purse, Mr Baloban's wallet, the alcohol cabinet, Mrs Baloban's mobile phone and the broom.
10. S/C Brooks' unchallenged evidence is that she conducted a fingerprint examination at the scene in which she developed and photographed 13 fingerprints from various locations inside and outside the property. Four fingerprints (F1-F4) were taken from the vertical rail of the side gate at the front of the house, one from the mobile phone (F5), two from the broom handle (F6 and F7), and six from three bottles of alcohol in the liquor cabinet (F8 – F9).

11. S/C Brooks says at paragraph 11 of her statutory declaration that she marked the fingerprints F1 – F4, F6 and F7 as exhibit item 1904946/001. She also deposed that at all times after receipt the exhibits were in a secure exhibit store or under direct control of the examiner. S/C Brooks does not specifically refer to F5 (or F8- F13) at paragraph 11, but she does annex photographs 10 and 11 of the developed fingerprint labelled F5 as an annexure to her statutory declaration; photograph 10 bears the label “P9066472 01/09/19 14 Rieff Crt, Mobile Phone Face”.
12. At paragraph 12 of her statutory declaration, S/C Brooks says that “other marks developed at the scene contained little to no detail for identification.”
13. S/C Brooks also deposed that item 1904946/001 (described at paragraph 11 of her statutory declaration) was photographed, labelled and secured in the Alice Springs exhibit room at the Crime Scene Examination Unit and that she forwarded images of fingerprints F1 to F13 to the Fingerprint Bureau electronically.
14. Mr Crocker, fingerprint examiner, swore a statutory declaration on 24 March 2020, which is exhibit P3. He deposes at paragraph 4 that on 19 March 2020 he retrieved from the NT Police Fingerprint Case File collection, case number 1904946. He said that the case was previously created in the Fingerprint Unit after the submission of case related images on a secure network drive relating to the investigation at 14 Rieff Court, Sadadeen by S/C Brooks on 01/09/2019; promis number 9066472. He said that the fingerprints he retrieved were labelled F1 to F13 inclusive.
15. In evidence in chief Mr Crocker said¹ that that process is that after the scenes of crime officer in Alice Springs (S/C Brooks in this case) has recorded photographs of the fingerprints that evidence is uploaded to a shared, secure database to which he has access. Mr Crocker was alerted to the presence of the fingerprints in the database via email. S/C Brooks does not say in P2 that F5 is part of item 1904946/001, this is inexplicable. However, she does clearly identify the fingerprint images she took from the crime scene as F1 to F13, describing in a table at paragraph 10 of P2 where each of the prints was taken from, and that she forwarded them to the Fingerprint Bureau. Mr Crocker’s evidence provides additional detail about how this was done and how he came to have access to the photographs of the fingerprints. S/C Brooks also includes a photograph of F5 in her statutory declaration, which clearly identifies the promis number. Taking the evidence of S/C Brooks and Mr Crocker together I am therefore satisfied that the chain of evidence is complete in that prints F1 – F13 taken by S/C Brooks at the crime scene are the same prints which were examined by Mr Crocker in Darwin at the Forensic Services Branch of the NT Police. The promis

¹ Transcript, 12/5/20, p 6

numbers and descriptions match and the electronic transfer system has been explained in sufficient detail.

16. Mr Crocker's evidence goes to the heart of this case, which is the identity of the person who entered the house as described by Mr Baloban. Based upon Mr Crocker's opinion evidence the prosecution are seeking to place the defendant's fingerprint (and therefore by inference the defendant) at the scene of the crime. Mr Crocker gave evidence on the basis that he is an expert fingerprint examiner and that his opinion evidence comes within the exception in section 79 of the *Evidence (National Uniform Legislation) Act 2011* (ENULA). The defendant objects to Mr Crocker's evidence on the basis that it does not fulfil the requirements for the s 79 exception and argues that it should therefore be excluded in accordance with s 76.

17. Section 79(1) is in these terms:

If a person has specialised knowledge based on the person's training, study or experience, the opinion rule does not apply to evidence of an opinion of that person that is wholly or substantially based on that knowledge.

18. Although it was initially conceded by the defendant that Mr Crocker has specialised knowledge as a fingerprint expert², in written submissions he argued that the prosecution did not establish that Mr Crocker possessed specialised knowledge. This is said to be because fingerprint analysis is not sufficiently reliable to meet the statutory test for specialised knowledge.

19. The phrase "specialised knowledge" is not defined in the ENULA. Australian jurisprudence has yet to set out a clear test which resolves the degree to which concepts of reliability are to be incorporated into the understanding of "specialised knowledge". There is academic argument as to this point, as expounded by Stephen Odgers in his text on evidence.³ The defendant relies upon this argument; submitting that the prosecution had failed to demonstrate the reliability of fingerprint analysis sufficient to qualify it as an area of specialised knowledge.

20. I reject this submission. Mr Crocker gave evidence that his area of expertise is fingerprint analysis and identification and that he has been working in that area since 1999. He set out his qualifications and experience at paragraph 3 of P3. In oral evidence he said that he is employed in the forensic science branch of the NT Police, where he has worked since 2009, as a senior examiner and that prior to that he was employed with the New South Wales police in the forensic branch as a fingerprint

² Transcript, 12/5/20, p 8, and outline of submissions filed in court 27 April 2020 paragraph 6

³ See discussion in S Odgers, *Uniform Evidence Law*, 14th ed, Lawbook Co, 2019, pp 550-558

specialist. He said that he has undertaken a series of examinations, practical, written and theory, and that he was assessed and certified by a board of senior fingerprint experts. Since then he has undergone annual reaccreditation. He has identified a very large number of fingerprints in his 21 years' experience and has given evidence in courts on numerous occasions. Mr Crocker said that he has delivered lectures in relation to his expertise to police, prosecutors and at seminars in relation to fingerprint examination. Mr Crocker, in cross-examination, demonstrated knowledge relating to a large number of published studies dealing with the methodology, limitations and general application of the science of fingerprint analysis. He was able to identify and describe the ACE-V methodology (described below) as the framework for approaching the analysis task, and gave evidence that that methodology is well accepted in the fingerprint analysis community. Further, in cross-examination, Mr Crocker gave evidence about the extensive range of situations and variables that can affect the quality of a fingerprint and the importance of the expertise of the examiner in coming to a reliable conclusion.⁴ Based on Mr Crocker's evidence I find that fingerprint analysis is an area of specialised knowledge as required by s 79 and that he is a person who possesses that specialised knowledge.⁵

21. The second issue is whether Mr Crocker's opinion in this case can be said to be based wholly or substantially on his specialised knowledge. The defendant argues that the Court cannot be satisfied that that is the case because Mr Crocker has not sufficiently demonstrated or exposed his reasoning process so that it is transparent.
22. As the High Court in *Dasreef Pty Ltd v Hawchar*⁶ made clear, an expert's evidence must explain how the field of specialised knowledge applies to the facts assumed or observed so as to produce their opinion. The High Court went on to say that in many cases this will be done quickly and easily and gave the example of a specialist medical practitioner giving an opinion as to diagnosis in their field of expertise which "would require little explicit articulation or amplification once the witness has described his or her qualification and experience, and has identified the subject matter about which the opinion is proffered."⁷
23. Mr Crocker's evidence is that he applied the ACE-V method to analyse the prints. ACE-V stands for Analyse, Compare, Evaluate and Verify. He explained the ACE-V methodology at Annexure 2 of P3. In oral evidence Mr Crocker said that his analysis in this case involved assessment of the friction rib skin on the fingers considering pattern configurations and ridge flow and checking for any other

⁴ Transcript, 12/5/20, pp 30-34

⁵ Noting also that fingerprint analysis has long been accepted by courts as a relevant area of expertise. See *R v Amatto* [2011] NSWDC 194, [7]-[8] and *JP v DPP (NSW)* [2015] NSWSC 1669, [26] (field of expertise conceded).

⁶ (2001) 243 CLR 588, [37]

⁷ *Ibid*

characteristics such as scars. He considered the overall clarity and quantity of points to determine if there was sufficient detail visible. He said that at the comparison stage he compared the identified reference points (pattern type and ridge flow characteristics) from the reference print against the unknown print from the scene taking into account whether the characteristics appeared in the same position in both prints and in the same spatial relationship to one another. Having made the comparison Mr Crocker said he considered whether he had a “sufficient amount of information”⁸ to form an opinion as to whether the unknown and reference print have come from the same source, or from another source. This is the evaluation stage. The last stage, verification, was explained as a checking or repeat of the first three stages by a separate examiner. That also occurred in this case.

24. Mr Crocker referred to each examination as a “science experiment”. He explained that the more characteristics which are seen in the correct position and spatial relationship the stronger the opinion that they came from the same person. Mr Crocker also explained that while a higher number of matching characteristics will give greater confidence, there is no longer any minimum number of matching features that must be identified by fingerprint experts before declaring a match. He said that that has not been the case for a long time, and that instead a holistic approach is taken, taking into account not only the quantity of characteristics, but also the quality of the overall print including clarity of what is observable and considerations such as the rarity of particular observed characteristics. Mr Crocker said that in this case F5 was a “non-complex” print which was easy to compare with a lot of detail visible. F6 was lesser quality with still containing a lot of “level 2” detail.
25. Mr Crocker also described in his evidence the role of computerised searching as a tool for identification of possible matches of unknown prints. All suitable fingerprints in this case F2 – F13 were searched on the National Automated Fingerprint Identification System (NAIFS). NAIFS is a database which compares unknown prints, the observable characteristics having been plotted, to those in the database and returns a candidate list of possible matches. Mr Crocker explained that the computer matching does not identify a print; it produces a list of possible candidates. Those possible matches are then analysed by a fingerprint expert.
26. Based on the above evidence I find that Mr Crocker has based his opinion wholly or substantially on his specialised knowledge as a fingerprint expert.
27. The defendant also asserted in his written submissions that Mr Crocker failed to differentiate between “the assumed facts upon which his opinion was based and his opinion in question”.⁹ The defendant does not identify what those “assumed facts”

⁸ Transcript, 12/5/20, p 7

⁹ Defendant’s written submissions 9 June 2020, paragraph 25.

were. The facts upon which Mr Crocker's opinion is based are the details in the fingerprint impressions lifted from the crime scene and the reference prints of the defendant. Those facts are not assumed, they were observed by the expert as he has described.

28. Mr Crocker said that when the initial NAIFS computer analysis was done in this case the mark identified as F5, from the mobile phone, returned a possible match for Graham Abbott.¹⁰ F6 was not returned as a possible match for the defendant by the initial computer analysis.¹¹ Prior to this, on 4 September 2019, another suspect had been advised to Mr Crocker by S/C Brooks, however Mr Crocker determined that this suspect was not a match for any of the fingerprints found at the crime scene.¹²
29. At paragraph 5 of his statutory declaration Mr Crocker says that on 19 March 2020 he retrieved from Alice Springs Watch House a set of stored record fingerprints in the name of Graham Abbott obtained on 19 July 2019. This request was made after undertaking the initial computer matching process in which F5 had included the defendant in the list of possible matches.
30. Mr Crocker's evidence, at paragraphs 6 and 7 of P3, is that on 20 March 2002 he analysed the fingerprints and compared them with the record fingerprints of Graham Abbott. In oral evidence Mr Crocker said that he analysed F5 by reference to the thumbprint of Mr Abbott from the known prints and looking for characteristics in the correct positions and spatial relationships. Mr Crocker said that the print F5 was a "double tap", which is two impressions from the same finger adjacent to each other, and that both prints were identical to the reference print from Mr Abbott's right thumb. Mr Crocker said that the analysis of F5 was relatively easy; there was a lot of detail visible and clarity quite high. In relation to print F6, Mr Crocker said that that print was of lesser quality than F5 but still contained a lot of observable "level two" detail¹³ and it was his opinion that that print was the right index finger of Mr Abbott.¹⁴
31. Mr Crocker's opinion therefore is that two adjacent fingerprints marked as F5 "mobile phone face" are both the right thumb of Graham Abbott and that the fingerprint marked F6 "broom handle" is the right index finger of Graham Abbott. He did not identify any of the other fingerprints from the crime scene (F1 – F4, F7 – F13 as described by S/C Brooks) as relating to Graham Abbott, or anyone else, after manual and computer searching.

¹⁰ Transcript, 12/5/20, p 6.

¹¹ Ibid.

¹² Transcript, 12/5/20, p 45

¹³ Mr Crocker agreed in cross-examination that level 2 detail was "individual friction ridge parts, friction ridge events such as bifurcations, ridge endings, dots, and their relative arrangements", Transcript 12/5/20 p 29

¹⁴ P3, paragraph 7; Transcript 12/5/20, p 7

32. The defendant has also submitted that, apart from considerations under s 76, Mr Crocker's evidence should be excluded in accordance with the discretionary exclusions at sections 135 and 137 of the ENULA.
33. Section 135 gives a court a general discretion to exclude evidence where its probative value is substantially outweighed by the danger that the evidence might be unfairly prejudicial, misleading or confusing, or might cause or result in undue waste of time. Section 137 applies only in relation to criminal proceedings and requires a court to exclude prosecution evidence if its probative value is outweighed by the danger of unfair prejudice to the defendant. Unlike s 135, there is no requirement in s 137 that the danger of prejudice "substantially" outweigh the probative value of the evidence.
34. In the defendant's submissions a list of considerations for exclusion, which the defendant says, are relevant was given.¹⁵ Having considered those matters, I cannot see that there are grounds for exclusion of the evidence of Mr Crocker based on either s 135 or s 137 of the ENULA. The probative value of the evidence of Mr Crocker is high. The defendant has not pointed to any specific evidence of prejudice or the existence of misleading or confusing material. The evidence supporting the grounds for exclusion must be established by the defendant on the balance of probabilities. The grounds for exclusion of the evidence under s 135 and/or s 137 are not made out.
35. The evidence of Mr Crocker needs to be carefully considered give its central importance to the prosecution case as the only evidence that places the defendant at the scene. The defendant submits that the evidence is unreliable and should not be given any weight.
36. It was put to Mr Crocker in cross-examination that it is not possible to say that no two people have the same fingerprint characteristics because not all fingerprints have been analysed. Mr Crocker agreed that it was impossible to examine the fingerprints of all people and that no database contains fingerprints of every person living in Australia.¹⁶ However, Mr Crocker also said that of those fingerprints which have been examined since the inception of the use of fingerprints for identification no two fingerprints have ever been found to be identical.¹⁷ This is not the same thing as saying that there could never be two fingerprints the same. Mr Crocker's evidence was that the very large number of comparisons done, including by computer using large databases, suggests that the chance of two people having exactly the same fingerprint characteristics is so miniscule it can be discounted.¹⁸ Moreover, that

¹⁵ Defendant's written submissions 9/6/20, paragraph 31

¹⁶ Transcript, 12/5/20, p 17

¹⁷ Transcript, 12/5/20, p 18

¹⁸ Ibid

studies reported in the relevant journals on the topic have also reported that the chances of two fingerprints possessing the same characteristics is extremely small.¹⁹

37. Mr Crocker also pointed out that the chances of matching two different prints from a scene to the same person further reduces the possibility of error,²⁰ noting that the two results were arrived at independently.²¹ He also confirmed that his opinion was presented as an opinion, not a statement of fact.²² I accept this evidence. Therefore, the incredibly small possibility that individual fingerprints may not be truly unique, in circumstances where this has never been shown in the large number of comparisons done worldwide, does not affect the reliability of Mr Crocker's opinion in this case.
38. Mr Crocker was also cross-examined in relation to the error rates (specifically false positive rates) in fingerprint examinations. Mr Crocker said that this area has undergone a lot of study and research with reports showing error rates as low as zero percent and up to 7.5 percent. He said that zero percent results were found, as he recalled the studies done, after application of the verification phase of the ACE-V methodology. Mr Crocker also said that studies on error rates were difficult because replicating fingerprint casework is impossible to do because each comparison is unique in itself.²³
39. Criticisms of the ACE-V method were put to Mr Crocker, in particular that as a judgement-based method it is impossible to say that errors will not occur and it is impossible to say that there is a zero error rate, because it depends upon the way in which each analysis is carried out rather than a broad adherence to a particular methodology. Mr Crocker was asked in cross-examination whether he agreed that it was possible that he had made a mistake or mistakes in the examination of the fingerprint impressions in this case. He responded that in his opinion he had not made any mistakes in this examination.²⁴ That exchange does not take the argument very far. Mr Crocker had already agreed that errors can occur because he had referred to studies on that issue which had shown that.
40. It was also put to Mr Crocker, and he agreed, that different examiners can come to different conclusions.²⁵ This is unsurprising as otherwise there would be little point to the Verification stage of the ACE-V methodology.²⁶ A general possibility that an expert may have made an error, or that a process not performed correctly could be

¹⁹ Transcript, 12/5/20, 20

²⁰ Transcript, 12/5/20, p 23

²¹ Transcript, 12/5/20, p 24

²² Ibid n 17; and P3, paragraph 7

²³ Ibid

²⁴ Transcript, 12/5/20, p 23

²⁵ Transcript, 12/5/20, p 39

²⁶ Transcript, 12/5/20, p 43 where Mr Crocker confirms that verifiers evaluations at verification stage may come to a different result.

open to error, does not automatically lead to a conclusion that the opinion of a particular expert in a particular case is unreliable. The fact that different examiners examining hypothetical prints might also come to different conclusions does not assist in determining whether Mr Crocker's evidence in this case is likely to be reliable.

41. Mr Crocker was asked in cross-examination about whether he had accessed the criminal history of the defendant in IJIS when conducting his analysis. He said he had not. He was also asked when he was aware that the defendant had been arrested and charged and he said that he was aware of that when doing the work related to preparing his statement for court. Questions were also asked about the verification process in Mr Crocker's office and he agreed that it is not a 'blind' process in that the second examiner is aware of the first examiner's findings at the time they review the work.²⁷ Mr Crocker also confirmed in cross-examination that he was aware of the possibility of confirmation bias and cognitive bias and the need to avoid them.²⁸ In re-examination, Mr Crocker gave evidence that it is the policy at the NT Police fingerprint branch that examiners are able to disagree with no repercussions.²⁹ He also stressed that in doing the examination it is important to keep an open mind and focus on each analysis as a scientific process and not taking into account extraneous information. Mr Crocker also stated that there was no disagreement at the verification stage of the analysis process in this case.
42. Much of the defendant's challenge to Mr Crocker's evidence in this case was directed to the alleged failure of Mr Crocker to detail each point of similarity between F5 and F6 and the reference prints. I do not regard this as detracting from Mr Crocker's opinion. The insistence upon the description of characteristics, to the exclusion of other aspects of application of expertise by the expert, seems to suggest that the fact finder might be able to make their own analysis of the fingerprints based upon such an exposition. I reject that implication. As Nicholson SC DCJ said in *R v. Amatto* "in the absence of specialised knowledge any opinion formed about matching fingerprints would be dangerous to rely upon."³⁰
43. Mr Crocker's evidence was that there is no way of knowing how old a fingerprint impression is. He agreed that as a result it was possible that the prints were deposited on the mobile phone and the broom before the break in.³¹

²⁷ Transcript 12/5/20, p 47

²⁸ Transcript, 12/5/20, p 48

²⁹ Evidence 2/6/20

³⁰ Above n 5, [8]

³¹ Evidence 2/6/20

44. I am satisfied that Mr Crocker is a credible expert who has carried out a robust expert analysis of the fingerprints in this case. I reject the defendant's submission that Mr Crocker's evidence was infected by contextual or cognitive bias. There was no evidence of that in this case. I reject the suggestion that because F6 was not identified by computer and was only compared to the reference prints of Mr Abbot that the opinion as to that fingerprint must be biased. Mr Crocker gave detailed evidence that he has followed an accepted process of examination which has checks and balances built in. He described the print F5 as easy to analyse and F6 as more difficult but still with sufficient detail. He made appropriate concessions in relation to the possible limitations of the fingerprint analysis process and the steps taken to avoid and minimise those. There is no evidence that any issue of bias or failure to follow an accepted methodology has affected his opinion in this case. I therefore accept Mr Crocker's opinion that F5 and F6 are impressions made by the right thumb and index finger of Graham Abbott.
45. The defendant sought in oral submissions a direction in relation to unreliable evidence in accordance with s 165 of the ENULA. The basis of this submission was that the opinion evidence might be unreliable because other examiners have made mistakes and opinion evidence as to fingerprint identification is not infallible. While I accept that no expert's opinion is infallible, I can see no application for s 165 in this case.
46. It is for the prosecution to prove all the elements of each of the offences beyond reasonable doubt. The defendant is not required to prove his innocence. As the prosecution case rests on circumstantial evidence, I remind myself of the observations by the High Court of Australia in *Doney v The Queen*³²

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.

47. It was submitted by the defendant that, even if Mr Crocker's opinion as to the identity of the person who deposited the fingerprints is accepted, that fact does not prove that the defendant is guilty beyond reasonable doubt because fingerprints are impossible to age and the objects upon which they are deposited, a mobile phone and a broom, are highly moveable and, in the case of the broom, were usually outside rather than inside the property. The defendant submitted that it was not possible to know where the broom came from and that it could have come from anywhere, even the dump and that therefore it is not possible to exclude the possibility that the prints were deposited innocently.

³² (1990) 171 CLR 207 at 211

48. I have carefully considered the evidence in this case. It is important to consider all of the circumstances established by the evidence. A mobile phone is a personal item. It is not available for general use and the evidence in this case is that it was inside the home of its owner, Ms Maxine Baloban. As an item that is constantly handled, it is also an item on which fingerprints deposited might often be expected to be smudged or rendered unclear. Mr Crocker gave evidence that this happens on such items. However, in this case the double tap print on the mobile phone was clear and easy to analyse. There is in my view no reasonable explanation consistent with innocence which could explain how the defendant's fingerprints came to be deposited on Ms Baloban's phone.
49. In relation to the broom, it is true that that broom was outside the house. But it was not outside the Baloban's property. There is no suggestion that the defendant had any business to be at the Baloban's property at any time prior to 31 August 2019. While it is theoretically possible that the broom was taken to a place where the defendant may have handled it, the suggestion is, on the whole of the evidence, not reasonable or credible. It is fanciful.³³
50. Considering the whole of the evidence, I am satisfied beyond reasonable doubt that the defendant is guilty of both of the offences charged.

Dated this 1st of July 2020

Meredith Huntingford
LOCAL COURT JUDGE

³³ *Burke v The Queen* (1997) 96 A Crim R 334