

CITATION: *Australian Federal Police v James Parry* [2025] NTLC 7

PARTIES: Australian Federal Police
v
James Edward Parry

TITLE OF COURT: LOCAL COURT

JURISDICTION: CRIMINAL

FILE NO(s): 22317194

DELIVERED ON: 1 April 2025

DELIVERED AT: Alice Springs

HEARING DATE(s): 12 December 2024

DECISION OF: Judge Woodroffe

CATCHWORDS:

CRIMINAL LAW – Preliminary Examination – Sufficiency of evidence – Obtain property by deception – s 227 *Criminal Code Act 1983* – circumstantial case – consciousness of guilt – inferences are not based on speculation or conjecture – ruling on sufficiency

Criminal Code Act 1983 ss 109(1), 227

May v O’Sullivan (1955) 92 CLR 654

Tovehead v Freeman [2003] NTCA 10

R v Geberty, Haley and Black

R v Billick (1984) 36 SASR 321

Question of Law Reserved on Acquittal (No 2 of 1993) (1993) 61 SASR 1

Seltsam v McGuinness (2009) 49 NSWLR 26

Jaeger-Steinberger v O’Niell [2011] NTSC 42

REPRESENTATION:

Counsel:

Prosecution: Ms O'Connor (CDPP)

Defendant: Mr Officer (Officer Lawyers)

Decision category classification: B

Decision ID number: [2025] NTLC 7

Number of paragraphs: 28

IN THE LOCAL COURT
AT ALICE SPRINGS IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 22317194

BETWEEN:

AUSTRALIAN FEDERAL POLICE
Applicant

AND:

JAMES EDWARD PARRY
Defendant

REASONS FOR DECISION
(Delivered 1 April 2025)

JUDGE WOODROFFE

Ruling as to sufficiency of evidence

1. The defendant, James Edward Parry is charged contrary to s. 227 of the *Criminal Code Act* of obtaining by deception, a benefit from another person, where the maximum penalty is one of 14 years imprisonment. The allegation is that James Parry (the defendant) submitted fraudulent invoices (of which there was 117) as a director of Tristar Alliance Group Pty Ltd for work not completed of providing work health and safety procedures to Voyagers Indigenous Tourism Pty Ltd and obtained a benefit of 113 invoices of \$436,500 paid by Voyages.
2. The prosecution is commenced by the Commonwealth Director of Public Prosecutions and due to the amount of money falsely received is strictly indictable and is proceeding by way of preliminary examination under the *Local Court (Criminal Procedures) Act 1928*.
3. Today the Court must consider whether it is sufficient to put the defendant upon his trial for any indictable offence under s. 109(1) of the Act.
4. On the 12 December 2024 there was heard legal argument in writing and orally as to this issue with Ms O'Connor counsel for the prosecution and Mr Officer for the defendant. Graham Heaselman is jointly charged but not presently involved in this determination, given his preliminary examination is yet to occur.

Whether there is a sufficiency of evidence

5. The of the question of whether is a sufficiency of evidence where there is a case to answer by the defendant is not whether on the evidence the defendant ought to be convicted,

but whether on the evidence as it stands could lawfully be convicted *May v O'Sullivan* (1955) 92 CLR 654 at 658.

6. The defendant contends that there is not a sufficiency of evidence in respect of an essential element of the offence, and there is no case to answer and that the charge on Information should be dismissed.
7. The necessary five elements for the offence to be proved are;
 - i. The defendant obtained a financial benefit;
 - ii. The defendant made a false representation;
 - iii. The defendant knew or believed that the representation was false;
 - iv. The defendant intended that the false representation be acted upon so that the benefit would be received; and
 - v. That defendant obtained or another person, obtained the benefit as a result of the making of the false representation.
8. There is no contention that the defendant obtained a benefit of receiving monies of \$436,500 and Haeselman subsequently from the defendant.

Facts

9. The non-contentious facts contend that Haeselman was during the material time an employee of Voyages as a General Manager of Health and Safety. In April 2017 in line with his authority Haeselman commissioned the defendant's company Tristar to provide work of training and health safety and procedures for the Voyagers in the development of a business work health and safety plan. On or about the 11 April 2017, the defendant wrote a scope of work to be done stating 'we shall invoice at the completion and submission of each procedure/training presentation' of billable hours of work at \$120 plus gst.¹
10. From 18 April 2017 to 22 August 2017 a total of 117 invoices were sent by the defendant to Voyages of which 113 invoices were paid to Tristar totalling the \$436,500. By an arrangement between the defendant and the co-accused \$287,924.70 was paid to Haeselman and to a third party of \$52,752, where only \$47,890.12 remained in the Tristar account that is said by the defendant for a future business partnership.
11. Voyages during the four month period that is alleged was in receipt of the invoices for work done by Tristar, when only two documents, the Electrical Safety Procedure against Invoice VOY-17001² and the WHS Communication Procedure against Invoice VOY- 17006³. The prosecution contends that both the Electrical Safety Procedure and the WHS Communication Procedure were copies of an existing procedure that was in the possession of Haeselman, prepared by him and subsequently not changed in any way by the defendant. The prosecution submits an inference that contrary to the engagement of work to be done, that the defendant was invoicing for work not completed and billable hours not spent prior to future procedures for invoicing that occurred on 13 June 2017.
12. There are two relevant dates involving the co-accused Haeselman where on 5 June 2017 he was authorised by the Board of Directors to develop a three-year WHS plan for Voyagers, and a safety management framework for over 40 policies and procedures. On 13 June 2017 Haeselman emailed the defendant a new means from the previous individual procurement and invoicing the provision an excel spreadsheet listing and highlighting the

¹ EI-71 p7.

² EI-54 at page 21-24, EI-39 p 159-197, EI-78, EI-79.

³ EI-54 at page 25, EI-106, EI 107.

various procedures and training to be done. The defendant returned invoices for each of the listed policies, procedures and training.

False representation

13. The prosecution must establish that the defendant in the making of each invoice made a false representation on the invoice, and that he knew or believed it to be false and whether he intended that false representation would be acted upon by Voyages to receive a benefit for himself.
14. Ms O'Connor submits three alternate basis in which there is a false representation;
 - i. The invoices claimed for 'units' as a representation of hours of preparation for the relevant document or presentation where in fact no person had completed those hours of preparation.
 - ii. The invoices represented the referenced work had been completed by Tristar, where instead Heaselman a Voyages employee had completed the work or presentation done.
 - iii. Claiming for preparation of documents and presentation which had not been prepared at all.
15. Both counsel raised the issue of the defendant's and Tristar in Civil trial with the NSW Supreme Court. Rightly indicated that concerned that the findings of facts and acquittal are not binding on this court and application. I do consider that certain aspects of that proceedings are relevant to the consideration of the prosecution case which is primarily a circumstantial case of whether a jury could convict having excluded all hypothesis consistent with innocence. Certain part of those proceedings are relevant in that aspect of consideration of other hypotheses consistent with innocence that prosecution must exclude. This is in line with the authorities of *R v Geberty, Haley and Black*, as well as the NTCCA decision of *Tovehead v Freeman* [2003] NTCA 10 [42].
16. The affidavit of the Voyagers' Chief Financial Officer, Mr Lopez⁴ in those proceedings that Haeselman had the authority to engage consultants and expenses initially at \$5000 and then from 9 June 2017 to \$10,000 and credit card of \$10,000. Also, there was no impropriety in raising purchase order for work anticipated to be done within the prescribed limits.
17. Concerning the two procedures provided of the Electrical Safety Procedure and WHS Communication Procedure, where work was not done or unchanged. The scope of work approved was to 'draft, assist or review work health safety procedures. The reviewing of procedures is a service done or work, and the mere feature that there have not been any changes to the document, does not necessarily mean that any fraudulent behaviour occurred.
18. With the new procurement procedures through the highlighted 40 excel spreadsheet, of procedures to be worked on and billable hours allowed. In the evidence of the defendant Parry at the Civil trial, it was that he was told by Haeselman for every invoice to invoice against the hours. That in cross examination of the defendant at Exhibit 154 page 87 was that the works needed to be allocated to this year's budget and not the next, and to utilise the budget in invoicing without having done them the procedures.

⁴ Exhibit 29 para.

19. The affidavit of Mr Parry⁵ against the 113 invoices sent, of having prepared 47, one invoice sent in error and re-issued and 63 unprepared, given the cessation of instructions from Haeselman on the stop order from Voyagers.
20. Further the evidence of the Civil trial, by the finance officer that the defendant had no knowledge of the procedures of the internal Voyagers administration and the manner of authority and direction of Haeselman such as the instruction to produce individual procedures or later under purchase orders procedure to produce invoices for work to be done at a later stage.
21. There is nothing in the actual documents of the invoices of itself that provides for the 'units' and individual procedures and presentation that of itself would be calculated in that understanding by the defendant to be a materially false representation or that he knew or believed that representation to be false and intended to be acted on so that he would receive a benefit.

Consciousness of guilt

22. The prosecution relies on a conversation⁶ between Voyagers Legal Counsel Mr. Morse and the defendant on 4 September 2017, where the defendant had said that the work had been done by a Joseph Mularkey⁷ a 'safety adviser employed by Tristar'. Joseph Mullarkery in an affidavit stated that he had not done any work for Voyages or the defendant upon any WHS & policies and procedures. Further he recalled that sometime in 2017 of being in a room with the defendant and his name was mentioned by him in a telephone conversation and he had asked why he had mentioned his name and he replied something to the effect of 'you were standing beside me and it was the first name that came to mind'⁸.
23. The prosecution contends that this is a crucial piece of evidence in going to a consciousness of guilt by the defendant in being put on the spot by Voyagers legal counsel, and forms part of the circumstantial case.

Rational inference not based on conjecture

24. As King CJ held in *R v Billick* (1984) 36 SASR 321 at 337 'where the case is circumstantial or partially circumstantial case and therefore depends on inferences, the question may be expanded so that it becomes: On the assumption that all the evidence of primary fact to be considered at its strongest from the point of view of the prosecution, and on further assumption that all inferences most favourable to the prosecution which are reasonably open are drawn, is the evidence capable of producing in the mind of a reasonable person satisfaction beyond reasonable doubt, of the guilt of the accused.
25. That was further developed by King CJ, in *Question of Law Reserved on Acquittal* (No 2 of 1993) (1993) 61 SASR 1 at 5. In a circumstantial case that implies that even if all the evidence for the prosecution were accepted and all inferences most favourable to the prosecution which are reasonably open were drawn, a reasonable mind could not reach a conclusion of guilt beyond reasonable doubt, or to put it another way, could not exclude all hypothesis consistent with innocence, as not reasonably open on the evidence.

⁵ Exhibit 159, 160, 161.

⁶ EI30 Statement of Jeremy Morse dated 9 October 2020 at [20-21].

⁷ EI - 163 Statement of Joseph Mullarkey dated 25 January 2024 at [11-13].

⁸ EI-163 Statement of Joseph Mullarkey dated 25 January 2024 at [6].

26. In *Seltsam v McGuinness* (2009) 49 NSWLR 262 that there is a difference between permissible inference and mere conjecture, 'if there are no positive proved facts from which the inference can be made, the method of inference fails and what is left is mere speculation or conjecture. Mildren J held, 'in *Jaeger-Steinberger v O'Niell* [2011] NTSC 42 an inference to be rational must rest upon something than mere conjecture.
27. I do consider and find that the inference sought to be gained by the prosecution as a consciousness of guilt by the defendant with Mr Morse and evidence by Joe Mullarkey of a conversation of sometime in 2017 and unable to who was talking to or circumstances of the conversation is mere speculation and conjecture and not a permissible inference.
28. Having considered and taking the prosecution case at its highest of a jury properly instructed on circumstantial evidence with the inferences that it seeks to draw, that are not founded on speculation or conjecture could not exclude as a logical and available hypothesis of the innocence of the defendant as outlined above could not be capable of establishing guilt beyond a reasonable doubt.

Orders

I make the following orders.

1. That there is an insufficiency of evidence to commit the defendant upon his trial on the count 1 obtaining a benefit by deception in the sum of \$436,500 is dismissed.
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