SUPREME COURT OF QUEENSLAND

CITATION:	*R v Sadeed* [2004] QCA 32
PARTIES:	**R** **v** **SADEED, Sayed Esaq** (appellant/applicant)
FILE NO/S:	CA No 190 of 2003 DC No 3546 of 2002
DIVISION:	Court of Appeal
PROCEEDING:	Appeal against Conviction & Sentence
ORIGINATING COURT:	District Court at Brisbane
DELIVERED ON:	20 February 2004
DELIVERED AT:	Brisbane
HEARING DATE:	10 February 2004
JUDGES:	McMurdo P and McPherson and Williams JJA Separate reasons for judgment of each member of the Court, each concurring as to the orders made
ORDERS:	**1. Appeal against conviction dismissed** **2. Application for leave to appeal against sentence dismissed**
CATCHWORDS:	CRIMINAL LAW – EVIDENCE – SIMILAR FACTS – ADMISSIBILITY – GENERALLY - where appellant found guilty of various counts of forgery, uttering, and fraud – whether evidence of uncharged acts was admissible to establish a pattern of conduct and therefore the existence of guilty mind on part of appellant – whether evidence of uncharged acts admissible as circumstantial evidence that appellant guilty of the offences charged CRIMINAL LAW – PARTICULAR OFFENCES – PROPERTY OFFENCES – FORGERY AND UTTERING – where appellant sentenced to four years imprisonment with a non-parole period of two years for each of four counts of forgery and four counts of uttering contrary to s 67(b) *Crimes Act 1914* (Cth), to be served concurrently – whether sentence within range *Crimes Act* 1914 (Cth), s 67(b) *Criminal Code* 1899 (Qld), s 408C(a) *R v Bond* [1906] 2 KB 389, considered

R v Finlayson (1912) 14 CLR 675, applied
R v Gray (1866) 4 F & F 1102; 176 ER 924, considered
Makin v Attorney-General (NSW) [1894] AC 57, considered
Pfennig v R (1995) 182 CLR 461, followed

COUNSEL: G P Long for the appellant/applicant
J R Hunter for the respondent

SOLICITORS: Legal Aid Queensland for the appellant/applicant
Director of Public Prosecutions (Commonwealth) for the respondent

[1] **McMURDO P:** I agree with McPherson JA that the appeal against conviction and the application for leave to appeal against sentence should be dismissed for the reasons he gives.

[2] **McPHERSON JA:** The appellant Sayed Esaq Sadeed was convicted after a trial lasting 23 days in the District Court at Brisbane of four counts of forgery and four counts of uttering contrary to s 67(b) of the *Crimes Act 1914* (Cth); together with a further two counts (nos 5 and 6) of fraud contrary to s 408C(1) of the Criminal Code. He was sentenced on each count to imprisonment for four years on each of the federal offences and to terms of two years or less for the other two, all to be served concurrently, with a non-parole period of two years. This appeal against his conviction is accompanied by an application for leave to appeal against sentence.

[3] The charges all arose directly or indirectly out of the operation of the *Motor Vehicles Standards Act 1989* (Cth), which is designed to regulate and enforce uniform national standards for vehicles that are to be used in Australia. The Act and the Regulations made under it set out to achieve this object, among other ways, by requiring vehicles of a non-standard make or model imported from abroad to be modified to comply with local specifications before being used for transport in Australia.

[4] Stated briefly, the procedure as it was at the relevant time was for the prospective importer to apply to the Commonwealth Department of Transport for approval to import the vehicle or vehicles, up to the permissible maximum number of 25 in a year, giving details of the make and model concerned and the date of manufacture, etc. Armed with that approval, the importer would approach a customs broker at the port of entry, who would arrange for the vehicle to be cleared from the wharf for delivery for modification to an approved fitter of official compliance plates before the vehicle was registered with the State Transport Department for use on the roads.

[5] The four counts of forgery which the appellant was found guilty of committing between 1998 and 2000 or 2001 related to approvals purporting to have been issued by the Commonwealth Department between about 1998 and 2001 for the importation of non-standard vehicles in the form of sports cars from Japan. Three of those forged approvals were uttered to a customs brokering firm Bulgin & Stockwell and the other to an officer of Queensland Transport. On another occasion, a vehicle imported by means of a forged approval was sold to a Mr Chua for a sum of $15,000. This vehicle had not in fact been modified as required by the legislation, but a bogus modification certificate was produced when the vehicle was registered. By falsely representing that the sale price to Mr Chua was only $4,500, the

appellant also succeeded in evading State stamp duty on the higher amount. These transactions gave rise to the charges of dishonestly obtaining property or a benefit under s 408C(1) of the Criminal Code that were the subject of counts 5 and 6 of which the appellant was found guilty.

[6] The forgeries were perpetrated by using a photocopy of a genuine approval or approvals issued by the Commonwealth Department, and then altering particulars such as dates, descriptions and numbers of the vehicles referred to in it, and the name or address of the person to whom the approval had been granted. The document was apparently then photocopied again before being used as genuine by uttering it to the customs brokers and others. The forgery was visible by reference to the original, if compared with it, but not necessarily without it. There was no dispute at the trial that the four instruments in question were forgeries, and witnesses from the firm of customs brokers gave identifying evidence at the trial of having dealt with the appellant in person.

[7] The various steps in the importation and deception were perpetrated in part by using a variety of different names as those for whom the vehicles were being imported. Some of them closely resemble each other as well as the name of the appellant. Examples of this phenomenon are Siad Qasim, Said Qasin, Qasim Said, Gasim Saied, Said Qasen, Qasen Saied, M Kamis, John (or Jhon) Sha and Jafar or Afar. A series of different addresses were also used, including 21 Kennedy Street, East Brisbane; 1 Martinse (or Marten or Martense) Street, Wishart; 80 Wishart Street, Mt Gravatt; 67 Latrobe Terrace, East Brisbane; 1012 Stanley Street, East Brisbane; 32 Toohey Road, Ekibin; 53 Pond Street, Mount Gravatt, and so on. The appellant, his wife, and his brothers or other relatives were shown to have lived at some of these addresses. Number 21 Kennedy Terrace, Paddington, was the address given by the appellant when he applied for a passport in 1992 under the name Sayed Qasim.

[8] As well as importing cars of the kind referred to, the appellant conducted a car wrecking business in Brisbane from a yard in Boyland Avenue, Coopers Plains. He had arrived in Australia from Afghanistan in 1981 and set about educating himself in English. It was the Crown case that Afghan names are, to Western minds at least, not always readily distinguishable in their pronunciation or spelling or in the sequence in which they appear, and that the appellant had made use of this characteristic in carrying out his deception. For his part, he and his witnesses gave evidence that it was not he but other persons with similar names who had carried out these transactions. He and other witnesses claimed to know some of them personally including Kamis, John Sha (or Shar), Z Jafar (or Afar), who were, they testified, real individuals. There were some immigration and other records referring to a Mr Kamis; but, if he was the same person, he had returned to Afghanistan before these events occurred. The prosecution case was that, after extensive searches, no such persons as Sha or Jafar were found to have existed, and that those names were simply aliases adopted by the appellant for the purpose of carrying out his deception. The evidence given by the defendant and his witnesses at the trial was characterised by the Crown on appeal as altogether lacking in credibility, and the jury rejected it.

[9] In addition, the prosecution tendered at the trial a series of seven files relating to claims on motor vehicle comprehensive insurance policies made by car owners against RACQ Insurance arising out of motor collisions alleged to have taken place

between 1994 and 2000. The RACQ files or relevant parts of them containing the claims were admitted under s 93 of the *Evidence Act 1977* (Qld) , and tendered from the custody of a Mr Moskwa, a senior claims investigator employed by RACQ, who described what they and their contents were. All of the claims had been paid or otherwise dealt with by the insurer. Counsel for the appellant at the trial objected to this material, but it was admitted and allowed to go to the jury as exs 79-85. The basis for its admission was, as the learned trial judge said in his initial ruling early in the trial, that it showed:

> "a strong possibility the accused was involved in the production of false documents in these insurance claims and using some names, some addresses and some phone numbers that keep occurring in the various counts that are the subject matter of the indictment, and the prosecution alleges that the accused is involved in a similar way both in the insurance claims and in the charges on the indictment in producing false documents and using the names of persons who do not exist."

[10] Later on, in summing up, his Honour characterised it as evidence of similar facts, and gave directions to the jury about the use that might be made of it in arriving at their verdicts. He reminded them that the RACQ claims were evidence of acts that were not charged against the appellant in the trial before them; and that those claims could be used only to prove the prosecution case as charged in the indictment, and not to show that he was a person of bad character or propensity. Such uncharged acts were relevant only if the jury were satisfied "that the accused made one or more of those insurance claims and the accused knew at the time that the claim or claims were false". Mere suspicion was not enough; and, unless they were satisfied of both of those matters, they could not make any use of the insurance claims, but must put them totally out of their minds. In that event, he said, "you must ignore them completely and confine yourself solely to the evidence of other matters led before you".

[11] It is, of course, well settled that in proving a state of mind like fraud, it is open to the prosecution to adduce evidence of a series of the same or a similar kind of recurring acts that demonstrate the necessary intention. In *R v Finlayson* (1912) 14 CLR 675, 678-679, Griffith CJ recognised this category as an exception "dictated by common sense" to the rule in *Makin v Attorney-General (NSW)* [1894] AC 57 against proving another offence for the purpose of showing that the accused is a bad character and so likely to commit the offence charged. His Honour, with whom Barton J agreed, adopted from the reasons of Bray J in *R v Bond* [1906] 2 KB 389, 415, a statement that such evidence is admissible to prove a system or course of conduct, or to rebut a suggestion of accident or mistake, if the other acts, when proved, tend to "show the existence of the plan and therefore, the guilty mind of the prisoner". The rule is, of course, constantly applied in practice in criminal trials of charges of this kind. An early instance, somewhat resembling the present, is found in *R v Gray* (1866) 4 F & F 1102; 176 ER 924, in which the accused was charged with arson of his shop in Derby with intent to defraud an insurance company. After consulting Martin B, Willes J admitted evidence that the accused had made claims on two other insurance companies in respect of fires in two other houses which he had occupied in London. Despite the absence of evidence about the nature of the fires or their causes, or about the number of persons present when the fires occurred, his Lordship refused to reserve the point for the Crown Cases Reserved.

[12] Evidence of similar facts or other acts is, as their Honours said in *Pfennig v The Queen* (1995) 182 CLR 461, 483-484:

> "circumstantial and as such raises the objective improbability of some event having occurred other than that asserted by the prosecution; in other words, that there is no reasonable view of the evidence consistent with the innocence of the accused … Accordingly, the admissibility of the evidence depends upon the improbability of its having some innocent explanation in the sense discussed."

[13] In the present case, the evidence objected to was adduced partly to prove that the acts of forgery and uttering charged against the appellant were done with intent to deceive or defraud, but principally to show that they were carried out not by any other or fictitious individual named Sha or Jafar, or by Kamis who (if he existed) had previously left the country; but by or with the participation and "guilty knowledge" of the appellant himself. For this, the evidence from the RACQ claims files exs 79 to 85 had, as his Honour directed the jury in summing up, first to satisfy two requirements; namely, that the accused had made one or more of those claims; and that he knew when he did so that the claim was false. If satisfied of those matters, it would be open to the jury to infer from the method adopted by the claimant that it was indeed the appellant, and not, as he claimed, someone else who had committed the offences charged.

[14] When one turns to the evidence to be gathered from those exhibits, it can be seen that some and probably each of the insurance claims was the product of the appellant's system. Exhibits 79 to 85 incorporate details of seven such claims on dates between 1994 and 2000 made on comprehensive motor vehicle property insurance policies issued by RACQ. In five of them, a person identified as Sar, Shar, or Sha appears as the insured or, more often, as the third party against whose claim the insured is seeking indemnity for loss caused in motor vehicle collisions. The given first names of these persons identified as Sha is either John, Jamshidzazda, or Jamshidzazda. In similar vein, the third party in three instances is identified as Kamis whose initials are twice given as M Z and, in the third case, as Jamri Kamis. The vehicle owners are a Mr Hashem (twice), Aslami (twice), or Azlan Mahhmud. At least four of those involved give their addresses as 57 Mitre Street, St Lucia; three as 32 Toohey Road, Ekibin; and one each as 1 Martense Street, Wishart, and as 53 Pond Street, Mt Gravatt. In two instances, the particulars provided report the collision as having taken place at the same street intersection on different dates; in another two, the identifying make and number of the damaged vehicle disclose marked similarities. In several cases the vehicle is said to be a total wreck or nearly so, and the claim is accompanied by an offer to buy the wreck as salvage. There is also some similarity in the language used in making the claim or reporting the incident.

[15] The jury were entitled to regard this claims material as manifesting the existence of a plan, scheme or system of using false names or addresses to defraud the RACQ in connection with insurance claims being made against it. The frauds may well have been facilitated by the car wrecking business conducted by the appellant and the access it provided to suitably damaged vehicles whenever the occasion arose to use them. In this way, the evidence in exs 79 to 85 in this case went beyond simply showing an intention to defraud or deceive. By showing that it existed, it also tended to identify the accused as the person responsible for

perpetrating it, and so destroyed his contention that some other person or persons named Shar, Qasem, or Kamis existed in fact and that it was they who were operating under those names. The RACQ files lent powerful force to the hypothesis that it was the appellant himself who was systematically using the same names, addresses and other personal details to deceive both the RACQ and the others who acted on the supposition that the Commonwealth Department approvals were genuine documents.

[16] No attempt was, or perhaps could have been, made on appeal to account for the evidence in a way that neutralised or minimised its impact or provided some other explanation of the compelling inference to which it gave rise. The evidence concerning the RACQ claims was particularly cogent and plainly admissible; the directions of the learned trial judge with respect to the use that might be made of it were clear and appropriately emphatic; and the jury were justified in acting on that evidence in finding the appellant guilty on all counts.

[17] The appeal against conviction must therefore be dismissed. As to sentence, it was submitted that a sentence of imprisonment for four years, with a non-parole period of only two years, was excessive. We were not referred to any previous instances of sentencing for offences directed at this particular legislation, and there appears to have been none in the past. Instead, it was sought to demonstrate the proposition contended for by reference to sentences for fraud under s 408C, and under Commonwealth social security legislation. Penalties imposed in respect of the former commonly fall within the range of 18 months to four years imprisonment depending on the degree of sophistication of the fraud involved, as well as other circumstances including the amount obtained; but they are sometimes considerably greater. Cases of forgery and uttering disclose a somewhat similar sentencing pattern, with early release on parole. Sentences for social security frauds are commonly often not so severe at least if the offender is not a persistent offender or is shown to have been constrained by circumstances of genuine hardship. Much therefore depends on particular or personal circumstances.

[18] Except in the case of Mr Chua, the offences here tend to look like "victimless" crimes and so as resembling, those "abstractions" like the revenue for which, Charles Lamb once said, it is difficult to feel much sympathy. But this is to mistake the seriousness of the offence of forging and uttering official documents purporting to come from government instrumentalities, on the integrity and faith of which so much commerce is necessarily conducted and depends. The need for general deterrence is, as the learned judge remarked, therefore of great importance in cases of this character. Added to this are the circumstances in which these offences were committed. It was submitted that the forgeries were crude; but it is difficult not to agree with his Honour when, in sentencing, he said:

> "The evidence in this case shows that you possess a great deal of cunning. I am satisfied that you used a number of false names and addresses to disguise your activities. This was a carefully and deliberately planned course of criminal conduct over a lengthy period of time. It is not a case of an isolated incident. It is not a crime of impulse. You organised an elaborate web of interconnecting false names and addresses."

Whether or not the forgeries themselves were obvious, they very nearly escaped detection, as in the nature of things they would, by those who were intended to act

on them. It was only by the chance of a casual observation by an officer at the State vehicle registration office that the discrepancy was eventually noticed that touched off the inquiry and investigation. The Commonwealth Department itself naturally had no reason to suppose that approvals were being forged in its name, and the scheme might therefore otherwise have been kept going more or less indefinitely. The procedure used for granting approvals has since been changed to prevent a recurrence of like offences.

[19] From the standpoint of the safety of vehicle owners and their passengers, the importance to the community at large of the Commonwealth legislation can scarcely be overrated. Having vehicles operating on public roads without their undergoing the prescribed modifications required by the national uniform standard has the potential to risk injury and even death to all road users. Moreover, vehicles imported and used without such modifications are themselves liable to seizure, or refusal of registration with all the third party insurance implications which that entails. In the case of Mr Chua, a student from overseas who was completely innocent of any wrongdoing, it cost him $1200 to have the necessary modifications made, to say nothing of the personal concern and trouble arising from being caught up in investigations like this before he succeeded in establishing his good faith. Other innocent purchasers of such vehicles may be much less fortunate. The number of vehicles disposed of by the appellant in this way is not known. Nor has any material been forthcoming from him about the profits that accrued through carrying out these illegal transactions; but he would hardly have continued to engage in them for over four years unless it was in fact proving profitable.

[20] The appellant was 42 years of age when he was sentenced. He is married with a family, and has no previous convictions in this country. He came here from Afghanistan in 1981 and he has steadily improved himself since his arrival, although not, it seems, always by honest means. It is, however, not possible to identify any mitigating circumstances in his favour. He has shown no remorse whatsoever for his criminal conduct. He persisted in defending all charges after a lengthy and costly investigation had been carried out, which must have disclosed the strength of the case against him, and which resulted in a lengthy trial that generated more than 1500 pages of transcript together with such parts of the documentary material as could conveniently be incorporated in the eight full volumes of appeal record. The jury rejected his testimony and that of his witnesses, which led his Honour to say that he, too, found himself unable to accept as truthful the appellant's account of the hardships he claimed to have suffered in the country of his origin. In short, there was very little that could be or was said in favour of the appellant that was capable of producing a reduction in the sentence imposed.

[21] In all the circumstances it is not possible to conclude that the head sentence of four years imposed was manifestly excessive, or that the appellant was entitled to expect an earlier release date than the non-parole period of two years fixed by the learned judge.

[22] I would therefore dismiss the application for leave to appeal against sentence.

[23] **WILLIAMS JA**: I have had the advantage of reading the reasons for judgment of McPherson JA wherein all relevant facts are set out. I agree for the reasons given

by him that the appeal against conviction, and the application for leave to appeal against sentence, should be dismissed.

[24] The remarkable similarity and co-incidence of names and addresses detailed on documents the subject of the charges and on documents being the insurance claims admitted as similar fact evidence, satisfies, to my mind, the signature test referred to in a number of the leading authorities on the subject of the admissibility of similar fact evidence. A principal plank in the defence of the appellant at trial was that the persons named in the forged documents were real, and the jury had to reject that contention before a conviction could be recorded. The evidence of the insurance claims strongly pointed to the fact that the names used in the forged documents were not those of real persons, and further that it was the appellant who masterminded the deception. The use of addresses and other particulars having a clear association with him confirmed that.

[25] I agree with the orders proposed.