SUPREME COURT OF QUEENSLAND

CITATION:	*R v Versac* [2011] QCA 318
PARTIES:	**R** **v** **VERSAC, Alex Christian Paul** (appellant)
FILE NO/S:	CA No 3 of 2011 SC No 315 of 2010
DIVISION:	Court of Appeal
PROCEEDING:	Appeal against Conviction
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	8 November 2011
DELIVERED AT:	Brisbane
HEARING DATE:	27 October 2011
JUDGES:	Chief Justice, Fraser JA and Margaret Wilson AJA Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDER:	**Appeal dismissed.**
CATCHWORDS:	CRIMINAL LAW – PROCEDURE – WARRANTS, ARREST, SEARCH, SEIZURE AND INCIDENTAL POWERS – WARRANTS – SEARCH WARRANTS – GENERALLY, ISSUE AND VALIDITY – VALIDITY – appellant convicted of five drug related counts at trial – police had carried out an unlawful surveillance operation and evidence from this surveillance had been excluded at trial – police had conducted a search of the premises under a search warrant and application to exclude that evidence had been refused – where the warrant was worded in the form of formal charges in an indictment – where the warrant named "you" as the person to commit the offence – where the warrant referred to prospective commission of offences – whether the warrant stated "brief particulars of the offence for which the warrant was issued" – whether a warrant may validly refer to an offence not yet committed – whether the warrant was formally defective – whether the warrant was invalid because based at least in part on the excluded surveillance evidence CRIMINAL LAW – EVIDENCE – CONFESSIONS AND ADMISSIONS – STATEMENTS – RECORDS OF

INTERVIEW – OTHER MATTERS – where appellant had participated in a record of interview after search of his unit and made damaging admissions – where primary judge had declined to exclude the record of interview – where the appellant contended that the confessional material had been induced by a person in authority and evidence to this effect had been given by the appellant's solicitor – where the appellant had made statements acknowledging guilt at his bail application – where the trial judge had rejected the evidence of inducement – whether the record of interview should be excluded

CRIMINAL LAW – PROCEDURE – SUMMING UP – where the appellant at trial had given evidence of matters which defence counsel had not put to prosecution witnesses – where that was addressed in prosecutor's final address – where trial judge gave orthodox direction and no objection was taken by defence counsel – whether it was appropriate for the trial judge to cover the matter in the summing up

Bail Act 1980 (Qld), s 15 (1)(b)
Criminal Code 1899 (Qld), s 679(b)
Criminal Law Amendment Act 1894 (Qld), s 10
Police Powers and Responsibilities Act 2000 (Qld), s 68, s 69, s 73, Schedule 4

Beneficial Finance Corporation Ltd v Commissioner of Australian Federal Police (1991) 31 FCR 523; (1991) 103 ALR 167; [1991] FCA 92, considered
Bunning v Cross (1978) 141 CLR 54; [1978] HCA 22, considered
Director of Public Prosecutions v Kilbourne [1973] AC 729, considered
George v Rockett (1990) 170 CLR 104; [1990] HCA 26, considered
Majzoub v Kepreokis (2009) 195 A Crim R 63; [2009] NSWSC 314, considered
R v Christensen (2005) 156 A Crim R 397; [2005] QSC 279, cited
R v Foley [2000] 1 Qd R 290; [1998] QCA 225, considered
R v Manunta (1989) 54 SASR 17, cited
R v Tillett; ex parte Newton (1969) 14 FLR 101, cited
Wright v Queensland Police Service [2002] 2 Qd R 667; [2002] QSC 46, considered

COUNSEL: A Boe, with S Robb, for the appellant
R G Martin SC for the respondent

SOLICITORS: Flexx Legal for the appellant
Director of Public Prosecutions (Queensland) for the respondent

CHIEF JUSTICE:

Introduction

[1] The appellant was charged on a nine count indictment with a series of offences. He pleaded guilty to one, was convicted seven others by a jury, and was acquitted on the remaining count. The charges were these:

Count no.	Charge	Disposition
1	Trafficking in heroin, 1 February 2005 to 1 June 2006	Verdict of guilty
2	Possession of more than two grams of heroin, 18 November 2005	Verdict of guilty
3	Possession of implements, 18 November 2005	Verdict of guilty
4	Possession of weapon, 18 November 2005	Verdict of guilty
5	Dangerous driving, 18 November 2005	Verdict of guilty
6	Possession of heroin, 23 May 2006	Verdict of guilty
7	Possession of steroids, 23 May 2006	Plea of guilty
8	Receiving proceeds of trafficking, 1 February 2005 to 1 June 2006	Verdict of guilty
9	Possession of steroids, 1 June 2006	Verdict of not guilty

[2] In his notice of appeal, the appellant appeals against his conviction on counts numbered 1 to 4, 6 and 8 and an offence he describes as "possession of a thing used to commit a drug offence". It is not clear to what he was referring there. It is appropriate to treat his appeal as brought against his convictions for all drug offences save the one to which he pleaded guilty (count 7).

The scope of the case

[3] Between February and May 2005, Senior Constable Moore received intelligence information in relation to activities at a storage shed at Melco Storage, Blunder Road, Oxley. He carried out a surveillance operation in relation to the shed up to 18 November 2005. It showed that the appellant frequently visited the shed. The Senior Constable did not consider that the information he had up to May would have been sufficient to persuade a Judge to authorize the issue of a surveillance warrant under the *Police Powers and Responsibilities Act* 2000 (Qld). At a pre-trial hearing, the learned primary Judge held that the police acted unlawfully in carrying out the surveillance operation, because they were trespassing, and His Honour excluded from the trial, on discretionary grounds, evidence of what it revealed.

[4] On 16 November 2005 Senior Constable Moore obtained a search warrant in relation to the shed. Two days later, expecting the appellant to visit the shed, police officers were present in its vicinity. They went to apprehend the appellant upon his arrival, but he drove off, crashing through a gate, and then drove dangerously (count 5).

[5] The police conducted a search of the premises, locating 83 grams of a powder containing heroin (count 2), a "pill press" (count 3), a loaded pistol (count 4), and documents relating to the appellant and his de facto partner. His Honour refused an application to exclude evidence of what was found during that search.

[6] After the appellant's abrupt departure on 18 November 2005, the police did not locate him again until 23 May 2006 when they apprehended him on the Bruce Highway. Having arrested him, they found, at his Spring Hill unit, luxury cars, jewellery, $10,000 in cash, heroin (count 6), and steroids (count 7).

[7] The appellant was interviewed by police officers at the Brisbane City Police Station and made damaging admissions. The Judge declined to exclude the record of interview.

[8] The continuing police investigation moved to a townhouse at Hollywell owned by an associate of the appellant. There the police found $653,000 cash concealed in the roof, together with the appellant's passport, and jewellery. A financial investigation by the CMC and admissions made by the appellant at trial showed that as at 30 January 2004, the appellant's assets were less than $12,000. However, between April 2005 and June 2006, there was an excess expenditure over income from known sources in the amount of approximately $1.1 million.

The grounds of appeal, the respective contentions and analysis

Ground one:

> "All evidence located during the search of unit A18 at the Melco Storage Facility at Oxley on 18 November 2005…should have been excluded from the trial."

A formally defective warrant?

[9] The appellant first contended that the search warrant was formally defective because, contrary to the mandatory requirement of s 73(1)(b)(i) of the *Police Powers and Responsibilities Act*, it did not state "brief particulars of the offence for which the warrant [was] issued". (The relevant reprint in force at the time that the warrant was issued was Reprint 4C).

[10] This was the relevant part of the warrant (addressed to the police officer):

> "This warrant is issued in relation to an offence
> That on the 17th day of November 2005 at Brisbane in the State of Queensland you unlawfully had possession of a dangerous drug namely heroin
> AND FURTHER
> That on the 17th day of November 2005 at Brisbane in the State of Queensland you did unlawfully supply a dangerous drug namely heroin to another person"

[11] The learned Judge referred to evidence of Senior Constable Moore that in seeking the warrant on 16 November 2005, he believed the appellant would be in possession of heroin the following day. The Judge also referred to the feature that the warrant did not name the appellant as offender, but considered that not of "primary importance" because the appellant had "disappeared". But he concluded that the warrant did not comply with the mandatory requirement to set out "brief particulars

of the offence": it did not go beyond "a mere recitation of the particular offence". He referred to *Wright v Queensland Police Service* [2002] 2 Qd R 667. (In that case the warrant said: "Section 123 *Criminal Code* – Perjury", and that was held insufficient: p 676, 678.)

[12] The appellant contends that this rendered the warrant invalid, and that His Honour should have embarked then on a *Bunning v Cross* ((1978) 141 CLR 54) type exercise to determine whether evidence found upon the search should nevertheless have been admitted. The Judge did not do so.

[13] The respondent points out that the wording on the warrant "would be sufficient for a formal charge in an indictment". Further, it was submitted, the alleged offender need not necessarily be specified, and that the terms of the legislation contemplate the possible specification of an offence likely to be committed in the future.

Analysis

[14] The relevant provisions of the *Police Powers and Responsibilities Act*, as in force when the warrant issued, provided:

"**68 Search warrant application**

(1) A police officer may apply for a warrant to enter and search a place (***search warrant***) to obtain—
  (a) evidence of the commission of an offence; or
  (b) evidence that may be confiscation related evidence in relation to a confiscation related activity.

(2) The application may be made to any justice, unless the application must be made to a magistrate or Supreme Court judge under subsection (3) or (4).

(3) Unless the application must be made to a Supreme Court judge under subsection (4), the application must be made to a magistrate if the thing to be sought under the proposed warrant is—
  (a) evidence of the commission of an offence only because—
    (i) it is a thing that may be liable to forfeiture or is forfeited; or
    (ii) it may be used in evidence for a forfeiture proceeding; or
    (iii) it is a property-tracking document; or
  (b) evidence of the commission of an indictable offence committed in another State that, if it were committed in Queensland, would be an indictable offence in Queensland; or
  (c) confiscation related evidence.
  Example for paragraph (a)(ii)—
  The search may be for evidence for which an application for a restraining order may be made under chapter 2 or chapter 3 of the Confiscation Act.

(4) The application must be made to a Supreme Court judge if, when entering and searching the place, it is intended to do anything that may cause structural damage to a building.

(5) An application under this section must—

(a) be sworn and state the grounds on which the warrant is sought; and

(b) include information required under the responsibilities code about any search warrants issued within the previous year in relation to—

(i) the place or a person suspected of being involved in the commission of the offence or suspected offence to which the application relates; or

(ii) the confiscation related activity to which the application relates.

(6) Subsection (5)(b) applies only to—

(a) information kept in a register that the police officer may inspect; and

(b) information the officer otherwise actually knows.

(7) The justice, magistrate or judge (the ***issuer***) may refuse to consider the application until the police officer gives the issuer all the information the issuer requires about the application in the way the issuer requires.

Example—

The issuer may require additional information supporting the application to be given by statutory declaration.

69 Issue of search warrant

The issuer may issue a search warrant only if satisfied there are reasonable grounds for suspecting evidence of the commission of an offence or confiscation related evidence—

(a) is at the place; or

(b) is likely to be taken to the place within the next 72 hours.

…

73 What search warrant must state

(1) A search warrant must state—

(a) that a police officer may enter the place and exercise search warrant powers at the place; and

(b) if the warrant is issued in relation to—

(i) an offence—brief particulars of the offence for which the warrant is issued; or

(ii) a forfeiture proceeding—the Act under which the forfeiture proceeding is authorised; or

(iii) a confiscation related activity—brief particulars of the activity; and

(c) any evidence that may be seized under the warrant; and

(d) if the warrant is to be executed at night, the hours when the place may be entered; and

(e) the day and time the warrant ends.

(2) If the warrant relates to an offence and the offence has been, is being, or may be committed in, on or in relation to a transport vehicle and involves the safety of the vehicle or anyone who may be in or on it, the warrant may also state

> that a police officer may search anyone or anything in or on or about to board, or to be put in or on, the vehicle.
>
> (3) If a magistrate makes an order under section 71, the warrant must also state that failure, without reasonable excuse, to comply with the order may be dealt with under the Criminal Code, section 205."

Particulars of offence

[15] I consider first whether the warrant complied with the requirement under s 73(1)(b)(i) that it state "brief particulars of the offence for which the warrant is issued". The object of that requirement is to delineate the scope of the search (cf. *R v Tillett; ex parte Newton* (1969) 14 FLR 101, 113). In *Majzoub v Kepreokis* (2009) 195 A Crim R 63, 75, Hall J of the Supreme Court of New South Wales observed, in relation to a comparable New South Wales provision, that "the bare specification of the offence is insufficient" (as occurred in *Wright v Queensland Police Service, supra*), although "the description of the offence…need not be made with the precision of an indictment". The statutory reference to "brief" particulars should be respected. The particulars provided here would in fact suffice for a formal charge on an indictment.

[16] The learned primary Judge referred to there being "a mere recitation of the particular offence", but did not specify what else should have been included. I respectfully consider that the terms used did amount to "brief particulars" of the contemplated offences. Their purpose was to define the scope of the material for which the search was authorized, and these particulars adequately did so. There is no suggestion the search which was in fact carried out was too wide, or attended by uncertainty as to its legitimate scope.

[17] There is no existing authority in the case law which would mandate the provision of more detail of the prospective offences. Particularly, *George v Rockett* (1990) 170 CLR 104 would not do so, and the single-Judge decision in *Wright v Queensland Police Service, supra*, to which we were referred, would not sit discordantly with the approach taken here.

Absence of name of offender

[18] The warrant names "you" as the person to commit the offences. It was destined for service on the occupier of the storage unit. The evidence was that it was the appellant who entered into the rental agreement for the storage shed. In a roundabout way, the warrant thereby identified the prospective offender if that was necessary. I put it that way because at least in some cases, provision of particulars of the offence arguably may not require specification of the name of the offender (which may or may not be known).

[19] The appellant in fact used a number of names. Specifying his "actual" name was nevertheless not necessary in this case to delineate the scope of the search, which related to evidence of drug activity within a confined space. In this case, providing brief particulars of the alleged offence therefore did not necessitate naming the alleged offender. I note that the warrant in *Majzoub, supra*, which was upheld, did not name the alleged offender.

Specifying offences not yet committed

[20] The offences are inelegantly expressed because they refer to the prospective commission of offences but in the past tense. That probably reflects the expectation that by the time the occupant was shown the warrant, the offences would have been committed. In any case, the issue is not the elegance of the expression, but whether a warrant may validly refer to an offence not yet committed.

[21] In providing when a police officer may apply for a warrant, s 68 is tense-neutral: it is to search to obtain "evidence of the commission of an offence". Likewise the provision as to the issue of the warrant, s 69, refers to "evidence of the commission of an offence" (either then at the place, or likely to be there within 72 hours). In describing the content of the warrant, s 73 requires brief particulars of "the offence for which the warrant is issued". None of this language would necessarily exclude a prospective offence.

[22] That future or prospective offences may be the subject of a warrant is in any case clearly confirmed by two other provisions of the Act.

[23] The first is s 73(2), set out above, which refers to a warrant relating to an offence where the offence "has been, is being, or may be committed…" While that sub-section relates specifically to offences committed within vehicles, it reflects the legislative intent that the reference to the commission of an offence in the more general provisions be read that way.

[24] The second is the definition, in Schedule 4 to the Act, of "evidence of the commission of an offence", para (c) of which is "a thing that is to be used for committing an offence or suspected offence". The words "to be used" contemplate an offence yet to be committed. (Those words appeared in the predecessor to s 69, s 679(b) of the *Criminal Code* – reproduced in *George v Rockett*, *supra*, p 107).

[25] There is considerable potential utility in this construction embracing future possible offending, as explained by Pincus J in *Beneficial Finance Corporation Ltd v Commissioner of Australian Federal Police* (1991) 103 ALR 167, 169:

> "A valuable function of search warrants, when properly used, must surely be to prevent the commission of offences. Suppose there is evidence that people associated with a terrorist group are accumulating a store of explosive devices in a house. There may be every reason to think the commission of a crime is contemplated, but no basis for saying whether it is likely to be murder, wilful destruction of an aircraft, extortion or some other crime. If the justice to whom the information is brought is satisfied that the devices in the house are likely to be used for some unlawful purpose, would it be right nevertheless to refuse a warrant for a search and seizure?"

Conclusion

[26] I would not have regarded the warrant as formally defective.

[27] Even were the warrant formally defective, there were substantial reasons why the *Bunning v Cross* discretion should have been exercised to admit the evidence. I am content to adopt the submissions presented by Mr Martin SC who appeared for the respondent:

> "The only argument against admission is based on pure formalism…[t]here was no violation of domestic privacy – the premises were commercial. It is not suggested that any errors in the warrant were the result of sly cutting of corners or made other than in good faith. Any 'illegality' did not affect the cogency of the evidence. The offence is manifestly very serious. 'Unfairness' to the accused is not a consideration…"

Inadequately based?

[28] The appellant secondly contended that the warrant was invalid because based on the "fruit of the poisoned tree", being the surveillance evidence which was excluded. The primary Judge held:

> "The evidence, though, is that Senior Constable Moore had, in addition to the inadmissible material, the intelligence which had led him to undertake surveillance of shed A18 in the first place. Where a search warrant can fairly be said to be based upon unobjectionable material, then, the fact that it might also be supported by inadmissible material does not render the search warrant or its results inadmissible."

[29] Counsel for the appellant, Mr Boe with Ms Robb, pointed to the absence of direct evidence that Senior Constable Moore relied on the earlier intelligence when applying for the warrant in November, and the acknowledged inadequacy of that intelligence to found an application for authority for a surveillance device.

[30] Counsel for the respondent responded that the prior intelligence was of significant scope, leading the police to the storage shed, and established the appellant's propensity for violence, including carrying firearms. Detective Moore under cross-examination said that he relied "at least in part" on surveillance material. He said that in applying for the warrant, the police had "good intelligence".

Analysis

[31] It fell to the appellant, challenging the adequacy of the warrant, to establish any insufficient foundation. Ordinarily one would look to the sworn complaint which founded it (s 68(5)(a)), but that was the subject of a claim of privilege which was not challenged. The primary Judge was not provided with the sworn complaint.

[32] The appellant's case on this point was left to rest on some limited questioning of Senior Constable Moore. It is not clear in the end whether the "good intelligence" to which he referred was one and the same as the intelligence garnered before the commencement of the unlawfully conducted surveillance operation. During cross-examination he was not asked, for example, when the evidence of the appellant's violent propensity and use of firearms arose. There was simply no comprehensive examination of the circumstances, apart from the excluded surveillance material, which based the application for the warrant.

[33] It is not necessary to determine the point reserved by Mr Martin – whether regard could legitimately be had to the excluded material in determining the validity of the warrant – because this challenge should be resolved against the appellant on the basis that he failed to discharge the burden he bore of establishing that the warrant lacked an adequate foundation. Not only was the sworn material not disclosed, but

there was apparently no attempt made to place it before the Judge. The Judge could have been provided with the sworn material without inspection by Counsel, for example, or the adequacy of the sworn material could have been ventilated in closed court. (Compare the course followed in *R v Christensen* (2005) 156 A Crim R 397, 401.) The course taken by the appellant's Counsel, which was confined to rather sporadic questioning of Senior Constable Moore, left the evidence in an unsatisfactory state which did not warrant a conclusion that the application for the warrant lacked sufficient foundation.

[34] I would therefore uphold the learned Judge's conclusion as to the adequacy of the foundation of the warrant, although by that different route.

Grounds 2 and 3

> "(2) The recorded interview between the appellant and Senior Sergeant Mitchell, conducted on 23 May 2006…was not admissible at the trial.
>
> (3) Alternatively, the [i]nterview should have been excluded from the trial."

[35] The appellant contended that the confessional material exposed by the interview was induced by a person in authority, within the scope of s 10 of the *Criminal Law Amendment Act* 1894. Counsel for the appellant relied particularly on this evidence from the appellant's solicitor Mr Jacobson:

> "Jacobson: He [Mitchell] told me he would like to interview Mr Versac, told me that the couple had a baby present at the unit and that Mr Versac's partner, Danielle, had called for someone to come down from the Gold Coast to collect the baby. He said that if that person didn't arrive before he needed to leave, he'd have to make other arrangements for the baby's welfare, and then he said that whilst he was aware he couldn't make any threat, promise or inducement, that should Mr Versac give an interview and accept responsibility for the drugs and the equipment in the storage shed, that would mean he would most probably not need to further consider charges (sic) his partner Danielle. …
>
> Farr SC: Now, after you spoke to Sergeant Mitchell, did you speak to either Mr Versac or Danielle?
>
> Jacobson: I did speak with them both. I spent some time talking with Mr Versac. I relayed what I'd been told by Officer Mitchell. I had advised Mr Versac of his rights in relation to speaking to police and giving an interview and I advised him that he should not participate. …
>
> I told him that Officer Mitchell had said that they had a large amount of evidence and that Officer Mitchell had made the suggestion that Mr Versac's participation in an interview, taking responsibility for the shed and its contents, would likely lead to the police not pursuing Danielle."

[36] The Judge rejected the appellant's evidence of inducement, which was to similar effect. He said that the appellant "took every opportunity to embroider his story in order to add verisimilitude to his own account". The allegations of inducement were denied by the police officers. The Judge characterized the appellant's claims as "inherently unbelievable", essentially because the police officer, having allegedly assaulted the appellant and threatened his wife, freely allowed the appellant to telephone his solicitor, in relative privacy and at not insubstantial length. The Judge noted the appellant's familiarity with the criminal justice process. He described the appellant's partner's evidence as "carefully rehearsed". Of Mr Jacobson's evidence, he said:

> "The evidence of Mr Jacobson on various points does not support the applicant. In particular, Mr Jacobson's submissions at the bail application are more consistent with instructions having been received that the offences had been committed and not that there had been conduct which led the applicant to make an involuntary confession."

[37] At that bail application on 14 July 2006, in an exchange with the presiding Magistrate, Mr Jacobson said the proceeding "will down the track be, in all likelihood, a sentence matter", and acknowledged the inevitability of a prison term for the trafficking. The appellant, who was present, spoke of being sentenced in "a year or so's time", and said "I'm sorry for what I've done".

[38] The significance of all of this for the Judge was the improbability that the appellant would have taken that position (directly and indirectly) if he believed that his confessional statements were vulnerable, a position radically inconsistent with that of an innocent man induced to confess.

[39] Having referred to the appellant's criminal history, the Judge said:

> "It would require considerable naïveté to accept that someone with that background in crime and experience of police procedures would allow submissions to be made acknowledging guilt, let alone make them himself, if the alleged threats and inducements had been made."

[40] Counsel for the appellant suggested there was a breach of s 15(1)(b) of the *Bail Act* 1980, which proscribes at a bail hearing any questioning of the defendant as to the alleged offence. But in what he said the appellant was not responding to questions directed to him: he had interrupted an exchange between the Magistrate and his solicitor.

Analysis

[41] The case was conducted before the primary Judge on the basis that the evidence of Mr Jacobson corroborated the evidence of the appellant. Having comprehensively rejected the credibility of the appellant's evidence, because of considerations inherent in it, there was nothing left to corroborate. As said in *Director of Public Prosecutions v Kilbourne* [1973] AC 729, 746 (by Lord Hailsham):

> "Corroboration can only be afforded to…a witness who is otherwise to be believed. If a witness's testimony falls of its own inanition the question of his needing…corroboration does not arise."

[42] As to ground 3, there is no discretionary consideration which would warrant excluding the confessional material.

Ground four

> "The jury should not have been directed regarding the failure of defence counsel to ask prosecution witnesses questions about what the defendant says occurred and the drawing of inferences from that failure."

[43] The appellant gave evidence of matters which defence Counsel had not put to the prosecution witnesses, in particular information given to the appellant by police officers as to the contents of the storage shed, information of which he would not have been aware if innocent. The Prosecutor legitimately addressed the issue in the final address. The Judge gave the jury an orthodox direction, covering alternative innocent explanations as discussed in *R v Manunta* (1989) 54 SASR 17, 23-24. (It did incidentally follow the form of direction suggested by the Benchbook.) Experienced defence Counsel at the trial took no objection to these instructions at the trial: there was no request for redirection.

[44] Counsel for the appellant submitted that the Judge thereby exaggerated the possible impact of this failure, and referred to this passage in *R v Foley* [2000] 1 Qd R 290, 291 (footnotes omitted):

> "…it is now generally recognised in criminal trials that in summing up on this issue, the judge should simply point out to the jury that the particular matter was not put to the relevant witness; that it should have been put so that the witness could have the opportunity of dealing with the suggestion; and that the witness has been deprived of the opportunity to give that evidence and that the court has similarly been deprived of receiving it. There will be exceptional cases where it is necessary to go further…The giving of additional directions in such cases is, however, fraught with difficulty."

Analysis

[45] Especially where the Prosecutor had legitimately (and without criticism) relied on this failure, it was appropriate for the learned Trial Judge to cover the matter in a reasonably comprehensive way, and the way he did it potentially assisted the defence position, in pointing out the need for the jury to exclude the range of innocent explanations which could apply. Additionally, this is a case where the absence of criticism from defence Counsel at the trial is significant.

Conclusion

[46] None of the challenges to the convictions was sustained.

[47] I would order that the appeal be dismissed.

[48] **FRASER JA**: I have had the advantage of reading the reasons for judgment of the Chief Justice. I agree with those reasons and with the order proposed by his Honour.

[49] **MARGARET WILSON AJA**: I agree with the order proposed by the Chief Justice and with his Honour's reasons for judgment.