

Fingerprint Evidence

R v Court – s89 Evidence Act (NSW) 1995

A few years ago a client of mine was charged with larceny of a car number plate. A car had been stolen and the next day the police recovered its number plate attached to another car. The police developed a single fingerprint on the back of this number plate and matched it to my client. I allowed the prosecution to tender the brief of evidence, made a submission that there was no case to answer and the charge was quickly dismissed.

Everyone I have related this story to has reacted with disbelief. It seems the general population, and indeed many lawyers, seem to have blind faith in fingerprint evidence to prove every aspect of the police case. This article seeks to assist practitioners appearing in the Local Court of NSW.

What Inferences Can Be Drawn?

I achieved the acquittal without challenging any of the forensic evidence. I allowed the police to tender the entire brief without objection - including the fingerprint expert's report. I did not challenge the allegation that the fingerprint was that of my client. However, I did challenge what inferences could be drawn from that fingerprint when the court made its finding of fact. In doing so, I relied on the English authority of *R v Court*.¹

R v Court

In *R v Court*, a car was stolen and later recovered by police. The police found a single fingerprint on the driving mirror and Mr Court was subsequently found guilty by a jury of stealing the car and sentenced to a term of imprisonment. Mr Court appealed his conviction and it was duly quashed by the English Court of Appeal.

The Court of Appeal held at [243]:

'that there was no sufficient evidence of possession of the car by the appellant, that the case should have been withdrawn from the jury at the close of the evidence for the prosecution and that the conviction must be quashed.'

The fingerprint founded an inference that Mr Court had been inside the car but that was all. It could not, by itself, found an inference that Mr Court was driving the car or that he had been in possession of it. Even if it could, there was no evidence to show that he was acting dishonestly at the time.

¹ *R v Court* (1960) 44 CrAppR 242

Application

In the present case, the fingerprint was clear and irrefutable evidence that my client had touched the number plate. But this was insufficient to prove the police case beyond a reasonable doubt. The court was unable to infer possession from a mere touching. Even if the court could, there is no way to prove the necessary mental element at the time of the touching simply from a fingerprint. There could be another innocent explanation.

This result usually leads to the protestation that, 'It looks dodgy! Doesn't he have to give an explanation for how his fingerprint got there?'

The short answer is no.

The Burden of Proof

The police carry the burden of proving every element of an offence. This burden is never shifted to the defence.² As larceny is a crime of mens rea, the police must prove both the act and the necessary mental element. In the present case, the police carried the burden of proving that my client had appropriated the number plate AND that he did so dishonestly.

We all have the right to stand mute and refuse to answer police questions and no adverse inference can be drawn from our silence.³ So my client was never required to explain how his fingerprint came to be on the number plate.

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² Woolmington v DPP [1935] UKHL 1

³ s89 Evidence Act (NSW) 1995