

# DPP v Pinn

*ss58, 60 Evidence Act (NSW) 1995*  
*DPP v Pinn [2015] NSWSC 164*

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[NB: Rusu was overturned on 30 September 2020 in [Gregg v R \[2020\] NSWCCA 245](#). This paper is provided for historical purposes only]

Pinn is now the leading case in NSW regarding the provenance of documents sought to be tendered as evidence. Police prosecutors often rely on Pinn to tender documents that are not technically admissible. I often see defence lawyers failing to object to this material because they have not understood the ratio in Pinn. This article aims to assist practitioners appearing in the Local Court of NSW.

## Provenance

There are many rules about what evidence a court can consider when deciding an issue. The most familiar ones are the rules relating to relevance, hearsay and opinion. But, when dealing with documents, there is a hurdle to jump before we even get to those rules. That is that the party offering a document must prove on the balance of probabilities that the document is genuine – that it is what it purports to be.

For example, a driver licence is good evidence of identity. However, fake driver licences are readily available on the internet. Anyone with \$50 can upload a photograph and obtain a counterfeit driver licence from any state in Australia or the US. So, the party offering a document needs to provide 'extrinsic evidence' to show the provenance of the document in case it is challenged.

## Before Pinn

Before Pinn, the leading case on provenance was *NAB v Rusu*. In that case, NAB sought to tender bank records under the business records exception to the hearsay rule. Bryson J rejected the tender as NAB could not show that the records were prepared by someone expected to have personal knowledge of the facts contained therein.

Bryson J was not prepared to draw such inference from the face of the documents themselves. This judgment was the basis for the submission that a document 'cannot prove itself' and must be verified or authenticated by live witnesses who can be cross examined (extrinsic evidence).

## Facts of Pinn

Mr Pinn was charged with eight breaches of an Interim AVO. The police carried the burden of proving beyond reasonable doubt, firstly, that an AVO had been made and secondly, that Mr Pinn had been present in court at the time.<sup>1</sup> The police sought to tender the bench sheet and an audio recording of the hearing both of which indicated that Mr Pinn had been present in court when the order was made. Mr Pinn's lawyer submitted that the only way

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<sup>1</sup> *DPP v Pinn [2015] NSWSC 1684* at [17]

they could be admitted was as business records and the police needed affidavits to comply with s170-172 Evidence Act or a certificate under s178. Mr Pinn's lawyer relied on *NAB v Rusu*.

Magistrate Huber (who had made the IAVO and filled in the bench sheet) rejected the tender of the documents without viewing them on the ground that their provenance was not proved by extrinsic evidence. Her Honour held at that there were four ways the police could have demonstrated provenance:<sup>2</sup>

1. An affidavit from the Registrar,
2. Issuing a subpoena to the Registrar,
3. Issuing a subpoena on the prosecutor who appeared who could give evidence that the defendant was in court, or
4. Issuing a subpoena to the domestic violence liaison officer who was present when the order was made who could have given evidence that the defendant was present.

As such, the police failed to prove that Mr Pinn was present and so he was acquitted of all eight charges. The police appealed to the Supreme Court which overturned the decision.

## Appeal to the Supreme Court

Adamson J held that the OiC's oral evidence that he had obtained the IAVO, the bench sheet and the audio recording from the registry was sufficient to establish their provenance. Once its provenance was established, the document was plainly relevant and so admissible.<sup>3</sup>

Section 60 provides that once a document is admitted for one purpose, it can be used for all purposes. So once the bench sheet was admitted, the statement that the defendant was in court was in evidence and could be used for all purposes including the hearsay purpose of showing that he was in fact present.<sup>4</sup>

## Can a Document Prove Itself?

Pinn was decided on the basis that the provenance of the documents had been adequately proved by the oral evidence of the police officer as to how he obtained them. Adamson J said at [43]:

*... in the case at least of the IAVO and bench sheet, their provenance had been established by Constable McCarron's oral evidence.*

...

But Adamson J went further in obiter and found that they would have been admissible even without this oral evidence. He held that a court can examine a document under s58 and draw reasonable inferences as to its authenticity or identity. He concluded that the magistrate was '*obliged to examine the documents before ruling on their admissibility*' and that had she done so, she would have seen they were authentic and admitted them.<sup>5</sup>

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<sup>2</sup>DPP v Pinn [2015] NSWSC 1864 At [30]

<sup>3</sup>DPP v Pinn [2015] NSWSC 1864 At [32]

<sup>4</sup>DPP v Pinn [2015] NSWSC 1864 At [34]

<sup>5</sup> DPP v Pinn [2015] NSWSC 1864 At [45]

With respect to the IAVO itself, it bore the seal of the court and so was presumed to be genuine under s150(1)(f).<sup>6</sup>

## Did Pinn Overturn Rusu?

No. Adamson J specifically did not overrule Rusu. He said at [36]:

...

*It is unnecessary for the purposes of the present proceeding, to express a view whether Rusu ought to be followed. In any event, I consider Rusu to have turned on its particular facts and circumstances.*

...

Rusu was distinguished as having turned on its '*particular facts and circumstances*'. Pinn can be distinguished in the same way. The submission would go like this:

*Your Honour, I submit that Pinn turned on its particular facts and circumstances. It involved an IAVO which had been made by the magistrate herself, a bench sheet that was filled out by the magistrate herself and an audio recording of a proceeding at which the magistrate herself presided. The documents were created by the magistrate herself and recorded facts that were already within the magistrate's knowledge.*

*On the other hand, in the present case, the prosecutor is offering a document that was not created by YH, asserts facts that are not within YH's knowledge and are disputed. I submit that Adamson J specifically did not overrule NAB v Rusu and the party proffering a document must prove its provenance by extrinsic evidence if it is challenged.*

I'm available everyday if you have any interesting issues.

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<sup>6</sup> DPP v Pinn [2015] NSWSC 1864 At [44]