
CANADA / JUDGMENT

R. v. Jahanrakhshan

2013 BCCA 128

COURT

British Columbia Court of Appeal

DECIDED

20 March 2013

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2013 BCCA 128 R. v. Jahanrakhshan

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

R. v. Jahanrakhshan,

2013 BCCA 128

Date: 20130320

Docket: CA039768

Between:

Regina

Respondent

And

Kamyar Jahanrakhshan

Appellant

Before:

The Honourable Madam Justice Ryan

The Honourable Mr. Justice Donald

The Honourable Mr. Justice Harris

On appeal from: Supreme Court of British Columbia, August 24, 2011

(R. v. Jahanrakhshan, 2011 BCSC 1164, Vancouver Docket 25096-2)

Appellant appearing on his own behalf

Counsel for the (Crown) Respondent:

R. R. Hira, Q.C. and S.M.R. Conroy

Place and Date of Hearing:

Vancouver, British Columbia

February 8, 2013

Place and Date of Judgment:

Vancouver, British Columbia

March 20, 2013

Written Reasons by:

The Honourable Mr. Justice Donald

Concurred in by:

The Honourable Madam Justice Ryan

The Honourable Mr. Justice Harris

Reasons for Judgment of the Honourable Mr. Justice Donald:

- [1] Kamyar Jahanrakhshan appeals from multiple convictions of credit card fraud, possession of property obtained by crime and possession of devices or materials for forging credit cards.
- [2] The appellant purchased seven second-hand luxury vehicles and a Sundancer 300 boat with Visa credit cards bearing his name. The account numbers on the cards belonged to other persons. He used more than one card for each of the purchases. For example, he used nine credit cards to make up a total of \$126,950 for the boat. The cards used in that purchase were on banks from all over the world: the United Kingdom, Brazil, Luxembourg, Portugal, France and Cyprus.
- [3] The evidence accepted by the trial judge was that the merchants were paid the amounts charged against the cards and that the banks bore the loss.
- [4] The prosecution adduced evidence in the form of business records under s. 30 of the Canada Evidence Act, R.S.C. 1985, c. C-5, to furnish proof that the appellant's use of the cards was fraudulent.
- [5] Of the many grounds of appeal, the appellant emphasizes the strength and importance of two points. The first is that s. 30(3) of the Canada Evidence Act stipulates that there must be two documents accompanying the copy of the business record, one from a person who states why the original cannot be produced, and another by a person who made the copy authenticating the document. The Crown adduced only one document in each instance

combining the two elements in a single affidavit by someone who explained why a copy was tendered and that it was authentic. This procedure, argues the appellant, fails to meet the requirements of the Canada Evidence Act, and the affidavits were inadmissible. In his submission, this would dispose of most of the counts in the indictment.

- [6] The second point is that even if all the affidavits were properly admitted, the Crown failed to prove that the account holders did not authorize the appellant's use of the accounts. The judge inferred the lack of authorization, but that is said to be conjecture unsupported by evidence.
- [7] I cannot give effect to either of these points. The approach taken by the Crown to consolidate the information required by s. 30(3) into one affidavit fully satisfies the purpose and object of the enactment and strict compliance with the two-document language was unnecessary. As to the second point, the appellant seeks to impose an onus on the Crown to disprove a fact so improbable as to be preposterous. The theory behind the submission, that someone would allow the appellant to use his or her account number on a card embossed with his name, halfway around the world, lacks an air of reality. The Crown could safely offer circumstantial evidence as proof of lack of authorization without leading evidence from the account holder.
- [8] The appellant advances other grounds related to the business records:
- (a) six of the 14 affidavits supporting business records were not properly sworn;
 - (b) three others were wrongly admitted as necessary and reliable under the common law exception to the hearsay rule; and
 - (c) the judge weighed the contents of the affidavits rather than the records themselves.

I reject these grounds.

- [9] The appellant alleges that the verdicts were unreasonable because there was no, or insufficient, evidence that:
- (a) the credit cards were falsified and unauthorized (see above);
 - (b) the cards were the property of the banks as alleged in the indictment;
 - (c) the banks suffered a loss;
 - (d) the appellant took possession of the property, the cars and boat, obtained by the commission of an offence; and
 - (e) the appellant had the mens rea for the offence of possessing instruments for forging credit cards.

I reject these grounds as well.

Discussion

Canada Evidence Act, s. 30

[10] Section 30 of the Canada Evidence Act reads in relevant part as follows:

30. (1) Where oral evidence in respect of a matter would be admissible in a legal proceeding, a record made in the usual and ordinary course of business that contains information in respect of that matter is admissible in evidence under this section in the legal proceeding on production of the record.
- (2) Where a record made in the usual and ordinary course of business does not contain information in respect of a matter the occurrence or existence of which might reasonably be expected to be recorded in that record, the court may on production of the record admit the record for the purpose of establishing that fact and may draw the inference that the matter did not occur or exist.
- (3) Where it is not possible or reasonably practicable to produce any record described in subsection (1) or (2), a copy of the record accompanied by two documents, one that is made by a person who states why it is not possible or reasonably practicable to produce the record and one that sets out the source from which the copy was made, that attests to the copy's authenticity and that is made by the person who made the copy, is admissible in evidence under this section in the same manner as if it were the original of the record if each document is
 - (a) an affidavit of each of those persons sworn before a commissioner or other person authorized to take affidavits; or
 - (b) a certificate or other statement pertaining to the record in which the person attests that the certificate or statement is made in conformity with the laws of a foreign state, whether or not the certificate or statement is in the form of an affidavit attested to before an official of the foreign state.
- (4) Where production of any record or of a copy of any record described in subsection (1) or (2) would not convey to the court the information contained in the record by reason of its having been kept in a form that requires explanation, a transcript of the explanation of the record or copy prepared by a person qualified to make the explanation is admissible in evidence under this section in the same manner as if it were the original of the record if it is accompanied by a document that sets out the person's qualifications to make the explanation, attests to the accuracy of the explanation, and is
 - (a) an affidavit of that person sworn before a commissioner or other person authorized to take affidavits; or
 - (b) a certificate or other statement pertaining to the record in which the person attests that the certificate or statement is made in conformity with the laws of a foreign state, whether or not the certificate or statement is in the form of an affidavit attested to before an official of the foreign state.

* * *

- (6) For the purpose of determining whether any provision of this section applies, or for the purpose of determining the probative value, if any, to be given to information contained in any record admitted in evidence under this section, the court may, on production of any record, examine the record, admit any evidence in respect thereof given orally or by affidavit including evidence as to the circumstances in which the information contained in the record was written, recorded, stored or reproduced, and draw any reasonable inference from the form or content of the record.

* * *

- (8) Where evidence is offered by affidavit under this section, it is not necessary to prove the signature or official character of the person making the affidavit if the official character of that person is set out in the body of the affidavit.

* * *

- (11) The provisions of this section shall be deemed to be in addition to and not in derogation of
- (a) any other provision of this or any other Act of Parliament respecting the admissibility in evidence of any record or the proof of any matter; or
- (b) any existing rule of law under which any record is admissible in evidence or any matter may be proved.

- (12) In this section,

"business" means any business, profession, trade, calling, manufacture or undertaking of any kind carried on in Canada or elsewhere whether for profit or otherwise, including any activity or operation carried on or performed in Canada or elsewhere by any government, by any department, branch, board, commission or agency of any government, by any court or other tribunal or by any other body or authority performing a function of government;

"copy", in relation to any record, includes a print, whether enlarged or not, from a photographic film of the record, and "photographic film" includes a photographic plate, microphotographic film or photostatic negative;

"court" means the court, judge, arbitrator or person before whom a legal proceeding is held or taken;

"legal proceeding" means any civil or criminal proceeding or inquiry in which evidence is or may be given, and includes an arbitration;

"record" includes the whole or any part of any book, document, paper, card, tape or other thing on or in which information is written, recorded, stored or reproduced, and, except for the purposes of subsections (3) and (4), any copy or transcript admitted in evidence under this section pursuant to subsection (3) or (4).

[11] It will be necessary to refer to ss. 52 and 53 of the Canada Evidence Act in relation to the argument about the swearing of foreign affidavits under s. 30(4)(b). Sections 52 and 53 read as follows:

52. This Part extends to the following classes of persons:

- (a) officers of any of Her Majesty's diplomatic or consular services while performing their functions in any foreign country, including ambassadors, envoys, ministers, charges d'affaires, counsellors, secretaries, attaches, consuls general, consuls, vice-consuls, pro-consuls, consular agents, acting consuls general, acting consuls, acting vice-consuls and acting consular agents;
- (b) officers of the Canadian diplomatic, consular and representative services while performing their functions in any foreign country or in any part of the Commonwealth and Dependent Territories other than Canada, including, in addition to the diplomatic and consular officers mentioned in paragraph (a), high commissioners, permanent delegates, acting high commissioners, acting permanent delegates, counsellors and secretaries;
- (c) Canadian Government Trade Commissioners and Assistant Canadian Government Trade Commissioners while performing their functions in any foreign country or in any part of the Commonwealth and Dependent Territories other than Canada;
- (d) honorary consular officers of Canada while performing their functions in any foreign country or in any part of the Commonwealth and Dependent Territories other than Canada;
- (e) judicial officials in a foreign country in respect of oaths, affidavits, solemn affirmations, declarations or similar documents that the official is authorized to administer, take or receive; and
- (f) persons locally engaged and designated by the Deputy Minister of Foreign Affairs or any other person authorized by that Deputy Minister while performing their functions in any foreign country or in any part of the Commonwealth and Dependent Territories other than Canada.

53. Oaths, affidavits, solemn affirmations or declarations administered, taken or received outside Canada by any person mentioned in section 52 are as valid and effectual and are of the like force and effect to all intents and purposes as if they had been administered, taken or received in Canada by a person authorized to administer, take or receive oaths, affidavits, solemn affirmations or declarations therein that are valid and effectual under this Act.

The Two Documents Requirement

[12] The judge gave a purposive reading to s. 30(3) which in my respectful opinion was appropriate. In his *voir dire* ruling given orally on February 10, 2011, he identified the rationale for s. 30 discussed in *R. v. Grimba and Wilder* (1977), 38 C.C.C. (2d) 469 (Ont. Co. Ct.), and *R. v. Martin* (1997), 8 C.R. (5th) 246 (Sask. C.A.):

[13] The apparent rationale for s. 30 was stated by Callaghan in *R. v. Grimba*, (1977), 38 C.C.C. (2d) 469. At [471], Justice Callaghan says:

Section 30 was placed into the Canada Evidence Act in 1968. It would appear that the rationale behind that section for admitting a form of hearsay evidence is the inherent circumstantial guarantee of accuracy which one would find in a business context from records which are relied upon in the day to day affairs of individual businesses, and which are subject to frequent testing and cross-checking. Records thus systematically stored, produced and regularly relied upon should, it would appear under s. 30, not be barred from this Court's consideration simply because they contain hearsay or double hearsay. However, before they qualify under that section, the provision of s. 30 must be strictly complied with.

[14] In *R. v. Martin*, (1997), 8 C.R. (5th) 246, the Saskatchewan Court of Appeal says [at paras. 48-50]:

The opening words of s. 30(6) appear to permit a consideration of weight to be made when the court considers admissibility. But if this means a court must reject a record because it contains double hearsay, it places documents prepared in the ordinary course of business in a fundamentally different category than documents admitted pursuant to the common law business duty exception. As indicated in [*Ares v. Venner*, [1970] S.C.R. 608], weight is an issue to be addressed after the document is accepted as evidence. The circumstances in which the information was gathered or the record produced, or the lack of such evidence, may affect the weight to be given to it by the trier of fact, but it does not affect its admissibility.

As a general rule, documents made in the ordinary course of business are admitted to avoid the cost and inconvenience of calling the record keeper and the maker. As a matter of necessity the document is admitted. Proof that a document is made in the ordinary course of business *prima facie* fulfils the qualification that in order for hearsay to be admitted it must be trustworthy.

Section 30 would have accomplished little if the author of the data contained in a business record had to be called to testify. The complexity of modern business demands that most records will be composed of information gleaned by the maker from others.

[Emphasis added.]

[13] The judge saw no purpose in giving s. 30 a literal application because one affidavit is as capable as two in serving the goal of accuracy. He said in his ruling:

[35] With regard to the affidavits' compliance with the requirements of s. 30(3), although s. 30(3) indicates a requirement for two documents when a copy of a record is produced in place of the original, it is my view that if the person who attests why it is not possible or reasonably practicable to produce the record itself is the same person who retrieved the record and copied it, only one affidavit of that person is necessary to satisfy the requirements of that subsection.

- [36] To interpret that subsection as requiring separate affidavits from the same person would, in my view, be absurd. Neither the reliability nor probative value of the copy in question would be enhanced by such an interpretation.
- [14] The appellant argues that, properly construed, s. 30(3) requires not only two affidavits, but two separate affiants as well. This, he says, would enhance the integrity of the process because two persons in the preparation of the material would more likely produce a genuine package.
- [15] I find this to be a wholly unpersuasive argument. The language chosen by Parliament may have assumed that the person who explains why producing the original is not practicable would delegate the task of making the copy to another person, in which case the person who makes the copy must attest to its authenticity; thus, two affidavits are produced: see *R. v. Parker* (1985), 16 C.C.C. (3d) 478, 7 O.A.C. 150. But where one person performs both tasks, the purpose of the Canada Evidence Act, which is to provide accurate information to the court, is fulfilled. The point taken by the appellant is an empty technicality.

Were the Affidavits Properly Sworn?

- [16] The appellant's arguments focus on the jurat of six of the affidavits attesting to business records.
- [17] The judge admitted the affidavits as having been properly sworn by "judicial officials ... in respect of ... affidavits" described in s. 52(e) of the Canada Evidence Act. He refused to admit three other affidavits under the Act taken by an English solicitor because she struck out the "judicial official" part of the form; although he admitted them under the common law exception to the hearsay rule. He explained this in his *voir dire* ruling as follows:
- [27] Turning to the question of whether the affidavits were properly sworn, the jurat on the affidavits at Tabs 1 to 10 of Exhibit A states that they have been sworn before someone who is described as being a judicial officer authorized to administer, take or receive affidavits, oaths, declarations. In each case, the occupation of the official is also stated.
- [28] I am satisfied that each of those affidavits has been properly sworn pursuant to the requirements of ss. 52 and 53 of the Canada Evidence Act. The jurat on the affidavit of Chen Hwai Huang at Tab 11 does not contain that notation. The person taking the affidavit is described as a barrister and solicitor of the High Court of New Zealand, and I am prepared to accept him as a judicial official within the meaning of that term in s. 52(a).
- [29] With regard to the affidavits of Dipesh Dhirajlal Ghelani at Tabs 12, 13, and 14 of Exhibit A, in two of them the notation "being a judicial officer or authorized to administer, take or receive affidavits, oaths, declarations" is specifically stroked out and initialled. The person taking the oath is described as a commissioner for oaths in and for England and Wales, as well as a solicitor. In the affidavit at Tab 14, the person taking the affidavit is described only as a commissioner for oaths in and for England and Wales.

[30] In respect of the affidavits of Dipesh Ghelani at Tabs 12 and 13, where the notation regarding a judicial official is stroked out, I am not satisfied that such affidavits comply with the requirements of s. 52 and 53 of the Canada Evidence Act, because the person appears to have considered that they were not a judicial official as required by s. 52. In my view, the validity of the affidavits is not saved by s. 30.

* * *

[33] However, I am satisfied that such documents, except the forms and letters specifically referred to above, may be admitted under the common-law exception to the hearsay rule as business records.

[18] As I understand the appellant's first submission on this topic, he says that the judge should not have accepted the declaration of "judicial official" in the jurat at face value. Something more was needed to bring the status of the person taking the affidavit in the country where it was sworn to the level of a judge or the kind of senior government officer comparable to the diplomatic officers listed extensively in s. 52(a)-(d) and (f).

[19] This, in my opinion, misconstrues what is intended in s. 52(e). The reference to judicial official goes to the capacity of an individual to administer an oath or affirmation, not to his or her status as a judge or senior government officer. The function is one of the things done routinely by judges but not exclusively. Many other officials in judicial systems are authorized to carry out this task: see *R. v. Thompson* (2001), 50 W.C.B. (2d) 508 at paras. 33 and 34, and *R. v. Pilarinos and Clark*, 2001 BCSC 1690, 52 W.C.B. (2d) 161 at para. 88. If Parliament had intended to restrict s. 52(e) to judges or high-ranking government officials, it would have said so.

[20] The appellant's second submission on the jurat relates to the affidavit taken by an Alberta solicitor in Abu Dhabi, United Arab Emirates. The judge accepted the Crown's argument that s. 30(3) of the Canada Evidence Act allows for the affidavit in question to be "sworn before a commissioner or other person authorized to take affidavits" and that refers to a commissioner in a province of Canada. I think he was correct. Had the affidavit been sworn in a province other than Alberta, there could have been no objection to its validity. What if the lawyer held a commission from British Columbia? The result must be the same.

[21] The affidavit in question was evidence for a Canadian court; it was taken by a Canadian lawyer acting in the capacity of a commissioner for taking oaths. The location of the swearing does not affect its validity for Canadian purposes. To restrict the capacity to administer oaths only to the jurisdiction granting authority would ignore what is at stake here. As a practical matter, the court needs to know that the oath or affirmation was taken by a qualified person. The Alberta lawyer was such a person.

Affidavits Admitted under the Common Law Exception to the Hearsay Rule

[22] The judge gave effect to the argument that the jurat in two of the three affidavits out of England did not satisfy s. 52(3) because "Being a judicial official authorized to administer, take or receive affidavits/oaths/declarations" was struck out. The third affidavit did not contain that statement at all. This was a very strict application of s. 52(e). The solicitor who took these affidavits for Barclays Bank PLC represented herself in the jurat as "Commissioner for Oaths in and for England and Wales", which could have been taken as the functional equivalent of the words struck out. Nevertheless, the judge admitted them under the common law exception to the hearsay rule. I think he was right to invoke the exception. The two elements of necessity and reliability were present. The appellant submits that the judge gave no reasons for finding that the dual requirement was satisfied. However, I think it is obvious that necessity was established on the same basis as the rationale for s. 30 discussed earlier - the practical necessity of dispensing with viva voce witnesses when documentary evidence will suffice. In this case, it would have been necessary to call the affiant from England to authenticate bank records kept in the ordinary course of business. This would not have been reasonably practicable. Reliability is satisfied again on the rationale given for s. 30, the guarantee of accuracy inherent in the records, because it can be taken that a business depends on those records in the conduct of its daily affairs. But for a highly technical defect in the jurat, the affidavits would have gone in under s. 30 so it cannot be said that their admission was on other than a solid basis.

Weighing the Affidavits Rather than the Records

- [23] The appellant argues that the affidavits can only speak to the matters in s. 30(3): explaining why copies, not originals, are proffered, and authenticating the copies. He submits that the records must speak for themselves. The affidavits in this case exceed the bounds by interpreting the records and giving evidence as to their significance, which is what the judge should be doing. In sum, the judge erred in allowing evidence in this form and by assessing what the affiants said about the records rather than the records themselves. According to the appellant, had the judge approached the matter in the proper way, he would have seen that the records did not prove the offences.
- [24] The key findings in this regard can be found in the judge's reasons for conviction, 2011 BCSC 1164:
- [161] As to the weight to be given to the affidavit evidence, the evidence has been admitted under s. 30 of the Canada Evidence Act as business records. In determining the probative value to be given to any information contained in the records, subsection 30(6) permits the court to examine the records, consider the circumstances in which the information in the record was recorded or reproduced and draw any reasonable inference from the form or content of the record. Subsection 30(9) permits the cross-examination of the person with knowledge of the record with the leave of the court.

* * *

- [163] In my view, the affidavit evidence that the credit card account numbers used did not belong to the accused is clear and compelling. It is the type of evidence that is contemplated by the provisions of s. 30 of the Canada Evidence Act and I see no reason for minimizing the weight of this evidence. It is also my view that there is ample evidence that the financial institutions, referred to in these counts, incurred the cost associated with the use of credit cards by the accused. Based on the evidence regarding how merchants are paid for transactions involving the use of a Visa card, it is clear that the payments are made by the bank that issued the credit card account. The merchants were paid for the property that was purchased and such payments could only have come from the banks.
- [25] The judge selected as an example for his analysis the purchase of a Cadillac Escalade where the appellant used, among other cards, one numbered on an account with the Westpac Banking Corporation in Sydney, Australia. The affidavit in connection with the transaction is in the same format as virtually all the others. The affidavit appends records which, by their nature, require explanation. The records consist of computer printouts displaying information in a form designed for internal use in codes and abbreviations which are mostly incomprehensible to an outsider. The affiant explains the records without making editorial comment or drawing conclusions. Section 30(4) of the Canada Evidence Act permits explanation in the affidavits and s. 30(6) allows the court to consider and draw inferences from the circumstances surrounding the record, including explanations offered by the affiant.
- [26] If, as the appellant seems to contend, the court could look only at the record, the object of s. 30 would be frustrated. I do not accept the complaint that the affidavits went beyond permissible bounds in explaining the records or that the judge improperly considered the explanations.

Unreasonable Inferences

- [27] The appellant's arguments that the judge convicted him on inferences unsupported by the evidence depend largely on the success of the attacks on the evidence which I have already discussed. I do not agree that the convictions are unsupported.
- [28] The judge gave his reasons with commendable clarity and it is unnecessary for me to do more than endorse the reasoning in his decision. The appellant fails to demonstrate any reversible error.
- [29] Since the appellant laid so much stress on the point that the judge used speculation or conjecture to find that the appellant was not authorized to use the account numbers on the credit cards, I will add a little to what I said in the introductory part of these reasons.

- [30] As mentioned, the judge selected the Cadillac Escalade as the prototypical transaction, and used the inference derived from the evidence to make findings on the other transactions which follow the same pattern. He wrote:
- [165] As to proof by the Crown that the accused was not authorized to use the account number by the account holder, Ms. McCormack, I infer from the circumstances surrounding this transaction that no such authorization was given and I so find. It is inconceivable that authorizations were given by that account holder along with the other account holders referred to in the affidavits of representatives of the Bank of Western Australia and Barclays Bank, whose account numbers were used to purchase the Cadillac Escalade. I am not prepared to accept that the individual account holders, who were unrelated to the accused, with credit card accounts in Australia and the U.K., authorized the accused to use their account numbers, on credit cards which displayed the name of the accused, for the purpose of making multiple payments towards the purchase of a motor vehicle in North Vancouver. This is not the case of someone using another person's credit card, such as a spouse's card, with their permission to use it. In this case the accused was using numerous credit cards embossed with his name but with account numbers of other persons issued from banks outside Canada. He was not using a legitimate card with an account number that had been issued to Ms. McCormack.
- [166] As I have concluded that the banks paid the merchants in respect of the transactions in question and their account holders did not bear the cost, it is also reasonable to infer that the account holders did not authorize the use of their account numbers by the accused. Had that been the case, it would be expected that the account holders would have paid the banks in respect of these transactions.
- [167] I am satisfied beyond a reasonable doubt that deceit or falsehood was used by the accused when he accessed the account of Ms. McCormack at the Westpac Banking Corporation by presenting various credit cards to Dealers Autosource when he purchased the Cadillac Escalade.
- [31] With respect, this reasoning is unassailable. The possibility advanced by the appellant - which he said had to be positively disproved by the Crown, not left to inference - was so fanciful as to be, in the judge's opinion "inconceivable". I agree with him.

Possession of Forgery Instruments

- [32] When the police searched the appellant's residence and storage locker, they found three plastic card embossers, a magnetic strip reader/writer, blank plastic cards, printed cards with bank graphics and holograms, forged credit cards with data on the magnetic strips, and credit card data. A police expert testified these were materials for forging and falsifying credit cards.

- [33] The judge accepted the expert's opinion. The appellant argues that the expert's qualifications were slim and the value of his opinion was weakened in cross-examination. He submits that mens rea was not proved.
- [34] The judge found that the appellant had the requisite mens rea. He said this:
- [208] The accused said that there was no evidence that these devices worked or not. During the cross-examination of Sergeant Koop, one of the embossers did not work very well. In my view, the Crown does not have to prove that the devices were in working order. It is enough that the accused knew that they had been used or were intended for use in forging or falsifying credit cards. Based on the evidence of the cards in various states of manufacture which were found in the accused's residence, it is reasonable to infer that these devices had been used in the forging or falsifying of credit cards.
- [209] The evidence establishes beyond a reasonable doubt that the accused possessed devices that he knew were either used or were intended for use in forging or falsifying credit cards, and I convict the accused of Count 87.
- [35] In this Court, the appellant repeats his argument that the evidence falls short of proving that he was actually making forgeries with the equipment.
- [36] The items themselves made a powerful case for the prosecution. The judge accepted the expert opinion and his judgment in that regard is entitled to deference. I can see no basis for interfering with the conviction for this offence.

Disposition

[37] For the above reasons, I would dismiss the appeal.

"The Honourable Mr. Justice Donald"

I agree:

"The Honourable Madam Justice Ryan"

I agree:

"The Honourable Mr. Justice Harris"

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