

HONEYSETT v THE QUEEN (S57/2014)

Court appealed from: New South Wales Court of Criminal Appeal
[2013] NSWCCA 135

Date of judgment: 5 June 2013

Special leave granted: 14 March 2014

In September 2008 three armed men robbed a pub after it had closed. The event was recorded on CCTV. That footage showed that each of the men wore dark clothing and had a T-shirt or a pillow case wrapped around his head. One of them (“the Offender”) carried a hammer. Mr Anthony Honeysett was later charged with armed robbery, on the basis that he was the Offender. The case against him was circumstantial.

Evidence admitted at the trial of Mr Honeysett included test results indicating that his DNA was on both a hammer found at the crime scene and a T-shirt found in the get-away car. Also admitted was evidence given by Professor Maciej Henneberg, an experienced forensic anatomist, who compared images of the Offender from the pub’s CCTV footage with police photographs of Mr Honeysett. Professor Henneberg gave an anatomical description of the Offender, based on eight features. These included a slim body build, a well-bent small of the back, short hair and a head that was somewhat elongated rather than round. Professor Henneberg said that Mr Honeysett shared those eight features with the Offender. He also said that he was unable to discern any differences between the Offender and Mr Honeysett. Evidence given by another forensic anatomist (Dr Meiya Sutisno) was to the effect that seven of the eight features in Professor Henneberg’s description of the Offender could not be established from the CCTV footage.

A jury found Mr Honeysett guilty, after which Judge Bozic sentenced him to imprisonment for 8 years with a non-parole period of 3 years and 10 months. Mr Honeysett then appealed against his conviction.

On 5 June 2013 the Court of Criminal Appeal (“CCA”) (Macfarlan JA, Campbell J & Barr AJ) unanimously dismissed Mr Honeysett’s appeal. Their Honours held that the evidence of Professor Henneberg was admissible, as it was an opinion based on specialised knowledge in accordance with s 79(1) of the *Evidence Act* 1995 (NSW) (“the Act”). The CCA found that that evidence identified physical characteristics that Mr Honeysett had in common with the Offender, without stating any conclusions that might be drawn from those characteristics. It was not to the effect that the Offender and Mr Honeysett were similar in appearance. Their Honours also found that Professor Henneberg’s detailed examination of the CCTV footage had rendered him an “*ad hoc*” expert such that his evidence went beyond obvious matters that the jury would have discerned for itself.

The grounds of appeal include:

- The Court of Criminal Appeal erred in the application of s 79 of the Act in holding that the evidence of Professor Hennenberg involved an area of

specialised knowledge based on training, study or experience, and that his opinion was wholly or substantially based on that area of specialized knowledge.

- The Court of Criminal Appeal erred in holding that the evidence of Professor Hennenberg's consideration of the CCTV footage rendered him an "ad hoc" expert.