

42. The CCA correctly observed that the Crown opened and closed the prosecution case on the basis that the wrench drawn by [the Appellant] was the murder weapon ([84]{AB2529}). This was a very significant part of the Crown case:

(a) In closing, counsel for the prosecution said that "at the end of the day, the Crown case comes down to two very simple propositions: firstly, the accused man unlawfully killed Mrs Lawrence by striking her on the head at least 12 times with the wrench that he had taken from the back shed" (TS Closing 30{3AB915}).

10 (b) In the course of the trial, the term "wrench", as the murder weapon, was used before the jury a total of 80 times.

20 (c) The Crown case was that the Appellant had killed the deceased with a wrench, similar to one which he had drawn when asked by the police to draw the murder weapon (TS 559-560{2AB507-508}). The Appellant's oral descriptions of the wrench varied but Inspector Brandham gave evidence that he asked the Appellant to sketch it and the Appellant drew the Sidchrome wrench (TS 561{2AB509}, CCA [82], [83] {7AB2528-2529}). Brandham also gave evidence that the Appellant said to him in one "confession", after giving a description of the wrench: "Yes. It was a big one; a Sidchrome similar to the one I have just drawn" (TS 561.A Brandham{2AB509}). The drawing became an exhibit (CCA [82]{CCA 7AB2528}, Trial Ex 33{2AB885}).

(d) The Appellant's sketch of "the wrench" was, at the request of prosecuting counsel, given to the jury during the course of the trial, to take into the jury room in the luncheon adjournment (see TS 570.8{2AB518}).

(e) The trial judge, in directing the jury, said (TS 1133.4{3AB953}): "You may need to form a conclusion about the nature of the weapon...is it a wrench of the type that was drawn in the sketch and that sort of size..."

(f) The Crown led evidence that the wrench drawn by the Appellant was a big, rusty, ratcheted "Sidchrome" wrench (TS 561 (Brandham) {2AB509}).

30 (g) The Crown also led evidence from Mr Lawrence that a 10 inch Sidchrome wrench with a screw type adjustable head was probably missing from the back shed (Lawrence TS 103{AB78}) (CCA [82]{7AB2528-29}).

40 43. It was an agreed fact before the CCA that at the time of the trial, the DPP had in his possession a Comprehensive Summary of Facts which had not been disclosed to the defence ([87]{7AB2529-30}), by Detective Shervill, which referred to an experiment conducted by striking a pig's head with a wrench similar to that drawn by the Appellant, which inflicted "dissimilar wounds to those suffered by the deceased". Dr Cooke also gave evidence to the CCA that prior to the trial the "issue of the type of weapon was discussed with the police officers, the police inquiry officers and with the prosecutor at the time." (App TS 204{3AB1194}). Detective Shervill gave evidence to the CCA that the experiment with a wrench

on a pig's skull was conducted on 24 June 1994 and that prior to the experiment he was probably aware that the Appellant had drawn a wrench (as the murder weapon) (App TS 952-954{4AB1573-1575}). The wrench was chosen for the experiment because that was what the Appellant had drawn (App TS 954{4AB1575}).

- 10 44. The police Running Sheets (which were in the possession of the police) were not disclosed to the Defence (Minute of Agreed Facts at point 5{3AB1175}). Those Running Sheets showed that the police had searched (unsuccessfully) for a wrench that could inflict the injuries suffered by the deceased (Ann "PSF1" of Fitzpatrick Affidavit of 20 December 2002, at pages 31 and 40{5AB1876, 1885}). Detective Brandham gave evidence to the CCA that after having obtained the Appellant's sketch, he and Detective Young went to a Tool Mart in Victoria Park and to the Belmont Tool Centre to search for a wrench that might have been capable of inflicting the wounds on Mrs Lawrence (App TS 1172, 1173{4AB1703, 1704}).
45. Further evidence given to the CCA was as follows:
- 20 (a) Dr Cooke had performed a second test on a pig's head with a wrench (App Ex 2) of which he said "to my eye it looks the same" (App TS 206{3AB1196}) as the wrench drawn by the Appellant. This was the same kind of wrench used in the first experiment (App TS 985 (Shervill) {4AB1606}). Dr Cooke's conclusion was that the wrench he tested "could not have caused many of the injuries to the deceased because it had a blunt crushing type mechanism rather than a chopping type mechanism" (AppEx 1, p13{6AB2161}). In cross-examination some differences were pointed out to Dr Cooke, such as the absence of the writing of the word Sidchrome on the wrench, and two barely perceptible differences in the shape of the wrench used for testing and the wrench drawn by the Appellant (it didn't have a wheel in the centre and there was a difference in the shape of the head of the wrench (App TS 206{3AB1196}).
- 30 (b) Evidence was given to the CCA that Sidchrome had never supplied the Australian market with a wrench or any other tool similar to that drawn by the Appellant (AppEx 64, ¶9 (Howlett){6AB2032}).
- (c) Evidence was also given to the CCA that Sidchrome wrenches ordinarily are not expected to rust; but rust was found in the wounds of the deceased (AppEx 36, ¶27 (Lynch){6AB2042}, AppTS 793 (Lynch XXN){4AB1471}).
- 40 46. The CCA said that an implement with some similarities to that drawn by the Appellant might have been capable of being the murder weapon ([104]{7AB2533}). That was not the evidence. Dr Cooke's evidence was that it was a possibility that "a wrench" was the murder weapon (App TS 203{3AB1193}) but he said that he had visited an auto repairer's large tool shed and had also looked at wrenches on the internet with counsel for the DPP, and had

never found any wrench that he was satisfied could have caused the injuries (App TS 222-223{3AB1212-1213}).

The lack of blood on the Appellant's clothing or shoes

- 10 47. There were more than 15 blows to the skull of the victim. The pathologist Dr Cooke gave evidence that he would expect heavy blood soiling of the "arms, hands or gloves" of the assailant (TS 148{AB109}). Dr Cooke told the CCA that "when a bloodied object is struck, and in this case seems to have been powerfully struck, causing the extensive injuries, then there is spattering of the blood in all directions and accordingly I would expect just as much blood to go towards the assailant as away from the assailant, in general sort of terms." (App TS 218{3AB1208}).
48. There were also blood splatters all around the partition where Mrs Lawrence was first attacked: Cooke (AppTS 217.D to 219.A{3AB1207-1209}) and on the rear door (see jury aid photo 50{2AB850}).
- 20 49. Mr Hall gave evidence to the CCA that he had done a "one-off simulated experiment", which surprised him, in which he discovered that "you can inflict repeated blows on to a wet bloodied object and none of the blood came back towards the assailant". However, he added "the general comment, though, is the more blows that are inflicted on to a person, the less likely that no blood will come back" (App TS 517{3AB1332}).
50. Dr Cooke also gave evidence that if the body was moved (as it was) there would be blood stains from transference as well as spatter, particularly if the body was moved twice (App TS 224{3AB1214}).
51. The following evidence was given at trial:
- 30 (a) The green and tartan shirts, blue jeans, blue pants and gloves of the Appellant (all of which he had been wearing at various times on the day of the murder) were all tested (TS 327{AB276}, 339{AB288}, 341{AB290}) and no blood was found on any of them (TS 843{2AB631}).
- (b) The Appellant was, according to Raine, in the lift of Bel Air at 5:13-5:15pm, and had no blood on him and he did not look wet (TS 275{AB234}, 277{AB236}, 280{AB239}, 285A-B{AB244}).
- (c) When the Appellant arrived at Engelhardt's flat his clothes were wet (it was raining heavily) but she saw no blood on his clothes (TS 234-235.A{AB193-4}, AppTS 443.C-E{3AB1263}, 445.A-C{3AB1265}, 473.A{3AB1293}).
- (d) At 6:58 pm the Appellant was on the train to Fremantle ([55]{7AB2523}), wearing the same jeans he had worn earlier (Ann "PSF1" of Fitzpatrick Affidavit of 20 December 2002, at page 50{5AB1895}). There was no sign of blood.

- (e) One small spot of blood was found on his Doc Martens shoes (TS 844E{2AB632}), the only shoes he owned, which he had worn the day of the murder. The blood was not from Mrs Lawrence (TS 845.A{2AB633}). It was his (TS 847.A{2AB635}), from having cut himself on a day prior to the murder (TS 259 Engelhardt{AB218}).

- 10 52. To meet the difficulty that it was likely that the murderer would have had blood on his clothing (and shoes), in his closing address, counsel for the prosecution said that Bagdonavicius had given evidence that "fresh blood can be washed off" and that the Appellant had confessed to "going down to the river near North Fremantle and wash[ing] his clothing and that explains the lack of blood on his clothing" (Closing TS 23C{3AB908}). See also XN of Bagdonavicius (TS 843B{2AB631}).

The lack of salt on the Appellant's clothing or shoes

- 20 53. For the Appellant to wash all trace of blood out of his clothes and shoes would have required considerable, vigorous washing and effort (TS 846.C-D{2AB634}). Before the trial, his clothes were tested for the presence of salt from the river (consistently with his alleged confession that he had washed his clothes in the river). A 6 page report was produced by Mr Lynch (App Ex 36{6AB2052}) which contained 2 pages under a heading "Examination of clothing for immersion in River Water". At the request of Detective Shervill a second report was produced, which omitted those 2 pages (see App Ex 36; Affidavit and report{6AB2036}).
- 30 54. These 2 pages were not disclosed to the defence (Item 6 of the Minute of Agreed Facts{3AB1175}) and it was conceded before the CCA by the Respondent that it should have been disclosed. The undisclosed part of the report stated that "the residual soluble salts detected in the clothing items are not consistent with immersion in river water as represented by the sample from adjacent to the Stirling Bridge, Fremantle, unless they were subsequently washed in fresh water"; and that the Appellant's shoes were examined visually with no sign of immersion (App Ex 36{6AB2057}).
- 40 55. Prior to the CCA hearing, counsel for the Respondent had filed written submissions, which sought to meet this issue by asserting that the rain that evening could have washed out all traces of the salt on the Appellant's clothing. At the request of counsel for the Appellant, Mr Lynch then conducted an experiment to determine whether the level of rainfall on the night of the 23 May 1994 could have washed out all traces of salt from the Appellant's clothing. He subjected clothes which had been immersed in the salt water of the Swan River to rainfall levels of 4-5 times the rainfall on 23 May 1994. His experiment showed that even at those rainfall levels, the levels of salt remaining were still significant and clearly identifiable (App TS 783{4AB1461}). Under cross-examination from counsel for the Respondent, Lynch said that he had told counsel for the Respondent prior to the appeal "that [he] doubted that the salt content could be removed in a brief shower" but that this needed to be tested (App TS 784{4AB1462}).

- 10 56. The Appellant said at trial that he was wearing dark blue trousers underneath ripped jeans, green silk shirt, maroon sports jacket and black "doc Marten's" shoes on the day of the murder (TS 910, 914{2AB671, 675}). Caporn said that the Appellant told him that he was wearing a red sports coat, green shirt, blue long pants and "doc Marten's" shoes when he got into the taxi (TS 329{AB278}). The taxi driver, Mr Peverall, said that the Appellant was wearing trousers with a green and red check and a hole near the knee (TS 158{AB119}). The exhibit of the Appellant's torn jeans shows they have a hole in the knee and red and green scribble on them (Trial Ex 7). The Appellant gave evidence at trial that after he returned to Engelhardt's flat he took off his jeans and jacket and was wearing the red chequered shirt and dark blue trousers (TS 918-919{2AB679-680}). Englehardt said that when he returned to her apartment (which she said was just after 6:30pm) he was wearing a black leather jacket, black leather gloves and black pants and a tartan shirt (TS 234{AB193}). Brandham said that in his verbal interview the Appellant said that he was wearing a "red flannelette shirt, jeans, Doc Martens" (TS 553{2AB501}) and had taken his cap and gloves from the laundry at Englehardt's flat prior to the murder (TS 552{2AB500}).
- 20 57. All of the (few) clothes the Appellant owned were taken to test for traces of blood, (and for traces of river water). (See Bagdonavicius App Ex 39{6AB2457}, Lynch App Ex 36{6AB2057} and App TS 796 A-B (Lynch){4AB1474}).
58. The Appellant testified to the CCA that he had washed his jeans before they were taken for testing. Caporn testified at trial that the Appellant had said in his "confessions" that "there is no dirty washing. I did it all yesterday" (TS 460{AB409}). The Appellant said in his evidence to the CCA that he had not washed his dark blue trousers or his green silk shirt (AppTS 1273{4AB1791}) (of course his shoes were not washed either), none of which, when tested, had any traces of the deceased's blood, or of river water.
- 30 59. The "Doc Marten" shoes were the only shoes the Appellant owned (TS 906{2AB667}). A spot of blood was found on those shoes, confirmed to be the Appellant's blood. The Appellant had cut his finger before the day of the murder (TS 259 Engelhardt{AB218}). It would be impossible for the shoes to have been washed in salt water, with no trace of salt remaining, yet the drop of the Appellant's blood still remaining on one shoe.

Appellant's cap

- 40 60. Central to the prosecution case was the "confession" of the Appellant that he "was wearing a cap and the cap was on backwards and the cap has got a gold border" (TS Closing 28{3AB913}). This was relied upon to support the evidence of Miss Barsden. Counsel for the prosecution said in closing "so you can see that what he is saying is right; that what Katherine Barsden saw was the cap with the gold border; on backwards".
61. The CCA also placed considerable reliance on Miss Barsden's evidence. It said that the Appellant's cap was "extremely close, if not the same, as the pattern and colours of the object on the head of the person she saw in the shop."

[[115]{7AB2535})). The CCA relied on this evidence to find as irrelevant the changes made to Miss Barsden's original statement, removing reference to blue and green colours (colours not in the Appellant's cap) which she had seen in the bandanna she said the man in the shop had been wearing.

62. Michelle Engelhardt was a crown witness. In her handwritten statement, made to the police only a few days after the murder, she said that the Appellant's cap was on a hook in her flat on the afternoon of the murder, and that when the Appellant arrived at her flat that evening he was not wearing any headgear and his hair was wet (contrary to the Crown's case and the Appellant's alleged "confession" that the Appellant was wearing his cap backwards at the scene of the murder and at the time of the murder).
63. All references to the whereabouts of the Appellant's cap, his wet hair and lack of headgear were removed from her original statement, by the police, and a typed statement prepared which did not contain that information. ([121]{7AB2537}). It was an agreed fact before the CCA that the handwritten statement was not disclosed to the defence at trial and that it was in the possession of the police (Minute of Agreed Facts Item 2{3AB1174}).

Other evidence before the CCA

64. Before the CCA, the Appellant sought to lead evidence of psychiatric evidence (which was available, but not led at trial) that the Appellant suffered from unipolarity at the time of the interviews, and was prone to fantasy and grandiosity.
65. Counsel for the Appellant led evidence before the CCA of a polygraph examination that the Appellant had undertaken and which representatives of the DDP had been invited to attend and to whom the results of which were promised irrespective of the conclusion. The conclusion of the polygraph examiner and United States expert who considered and scored the examinations was unequivocal. The Appellant was not being deceptive in his denials that he killed the deceased or his denials that he confessed (and was not merely "theorising"). The DDP led evidence from three experts that the results of polygraph examinations are unreliable. The CCA refused to consider the polygraph evidence.
66. Evidence was also led before the CCA that the Appellant had severe myopia, and without his glasses would not have been able to see that the passenger was a "young girl, and certainly could not have "locked eyes" with her. His description of the driver as a young man also shows he was just theorising. He was not wearing his glasses that day, as he had lost them: (App TS 726D{4AB1404}). See references to transcript in Appendix 2 concerning the "15 points".
67. The CCA said of this evidence (at [180]{7AB2547}) that it was never suggested that the Appellant was in a position to describe Miss Barsden with any precision or that when he had "locked eyes" with her he had been able to distinguish her features well enough to be able, for example, to describe the colour of her eyes or to identify her if he saw her again. All that was suggested was that he had noticed

that a girl was looking or appeared to be looking at him. The CCA also referred to the Appellant's own evidence that his eyesight was satisfactory. However, the CCA did not refer to the evidence of Miss Barsden at trial, that the windows of the car were tinted and that they were up when she looked at the person in Flora Metallica (TS 179{AB139}); and that it was overcast and there was no sunshine (TS 175-176 Barsden{AB135-6}).

Part V: APPELLANT'S ARGUMENT

A. Non-disclosure

- 10 68. As the CCA observed ([18]{7AB2516-17}) the prosecution conceded that it had a duty to disclose matters which can be seen on sensible appraisal by the prosecution:

- (1) to be relevant or potentially relevant to an issue in the case;
- (2) to raise or possibly raise a new issue whose existence is not apparent from the evidence the prosecution proposes to use;
- (3) to hold out a real (as opposed to fanciful) prospect of providing a lead on evidence which goes to (1) or (2)."

Matters falling within this test are referred to below as "relevant information".

69. The CCA observed that
- 20 (a) it was "not in dispute that the handwritten statement of Ms Engelhardt should have been disclosed, and would have been something in relation to which defence counsel would have wished to cross-examine her" ([126]{7AB2537});
- (b) the report [of Lynch] should have been disclosed ([137]{7AB2540}), which was conceded at para 54 of counsel for the Respondent's opening submissions; and
- (c) the experiments and inquiries in relation to the murder weapon which were conducted prior to the trial should have been disclosed to the defence ([106]{7AB2533}).
- 30 70. The duty to disclose relevant information is necessary for a fair trial. The rules of disclosure which have been developed by the common law owe their origin to the elementary right of every defendant to a fair trial (*R v Brown (Winston)* [1998] AC 367 at 374). Lord Hope in the leading speech in that case referred to the judgment of Steyn LJ in the Court of Appeal with approval (at [1994] 1 WLR 1599 at 1606):

"The objective of the criminal justice system is the control of crime, but in a civilised society that objective cannot be pursued in disregard of other values. That everybody who comes before our Court is entitled to a fair trial is axiomatic...the right of every accused to a fair trial is a basic or fundamental right. That means that under our unwritten constitution those rights are regarded as deserving of special protection by the Courts. However, in our adversarial system, in which the police and prosecution control the investigatory process, an accused's right to fair disclosure is an inseparable part of his right to a fair trial. That is the framework in which the development of common law rules about disclosure by the Crown must be seen".

See also *Tahche v Abboud* [2002] VSC 42 at [92]-[93] ("an inadequate investigation of the facts goes beyond unfairness and affects the very credibility of the trial"); *R v Garofalo* [1999] 2 VR 625 at 632-633; *Wilson v Police* [1992] 2 NZLR 533.

71. The concession by the Crown and the findings by the CCA of non-disclosure of relevant information of themselves suffice to establish that the Appellant was deprived of his right to a fair trial.
72. Another way of expressing this is to say that the concession and findings that relevant information had not been disclosed meant that an "irregularity has occurred which is such a departure from the essential requirements of the law that it goes to the root of the proceedings" or "a serious departure from the essential requirements of the law" (*Wilde v The Queen* (1988) 164 CLR 365 at [10]; *Quartermaine v The Queen* (1980) 143 CLR 595 at 600-601 (Gibbs J)). In such cases the proviso has no application.
73. Even if the proviso fell to be considered, the CCA erred in its application of the decision of the High Court in *Grey v The Queen* (2001) 184 ALR 593 (the correctness of which the CCA doubted). This was for 3 reasons.
74. First, the CCA's conclusion, that the non-disclosure of relevant information did not deprive the Appellant of a chance of acquittal, was based on its view that it was enough that the jury accepted the police evidence of the Appellant's "confessions", observing that the trial judge had directed the jury that they could not find the Appellant guilty unless they "accepted the police evidence of the confessions he made" ([57]{7AB2524}). But the trial judge *also* (correctly) directed the jury that they could not find the Appellant guilty unless they accepted that the "confessions" were not (as the Appellant claimed) "explicable in some other way such as the discussion of a theory or something of that sort?" (TS 1126{3AB946}). Each of the non-disclosed relevant matters increased the likelihood that the jury would have been left in reasonable doubt as to whether the Appellant was confessing, or merely theorising (with the assistance of the police).
75. In relation to the wrench, the CCA said that "a confession to the use of a weapon which may not have been that actually used, would have been but one more inconsistency" ([107]{7AB2533-34}). But that "one more inconsistency",

especially on a matter so important to the Crown case, may well have been enough to raise a reasonable doubt – had the jury been informed of the inconsistency – as to whether the Appellant was merely theorising about the murder, not confessing.

76. Second, the CCA failed to consider whether, cumulatively, the non-disclosed relevant information deprived the Appellant of a fair chance of acquittal. Instead, it considered (and rejected) each item of non-disclosed relevant information by itself.
- 10 77. In *R v Grey* (2000) 111 A Crim R 314 the NSW Court of Criminal Appeal held that the failure by the prosecution to disclose a letter of comfort given by the police to a key Crown witness at trial did not result in a miscarriage of justice. Grove J (with whom Sully J agreed) held that "in the context of the factual evidence pointing towards the guilt of the appellant, I am unable to conclude that the addition of one additional factor to the many others addressed to the central Crown witness gives rise to a significant possibility that the jury, acting reasonably, would have acquitted the appellant" (at [16]). An appeal to the High Court was unanimously allowed ((2001) 184 ALR 593). In a joint judgment, Gleeson CJ, Gummow and Callinan JJ referred to false statements made in the letter of comfort and held that "it is not difficult to imagine a fertile area of cross examination that could have been tilled by the Appellant" (at [18]). Their Honours said that "it is very unlikely that the appellant could have innocently
20 been in possession of and have been able to sell five indisputably stolen vehicles. It is a powerful point. The respondent nonetheless was bound to facilitate fair process by providing to the appellant all materials to which he was entitled to have access. This did not happen." ([26]). In a concurring judgment, Hayne J remarked that "no matter what *other* attacks could have been, or were mounted against Mr Reynolds and his evidence, the jury, taking into account of what was revealed by the letter, might have entertained a reasonable doubt about its veracity" (at [83]). Kirby J said that "the prosecution should gain no such
30 advantage from its conceded default in disclosing this important information to the defence" (at [72]).
78. The six matters outlined below which were not disclosed to the defence, denied the Appellant "fair process by providing... all materials to which he was entitled to have access" and were all "fertile areas of cross-examination". The point is that every instance where part of the alleged "confession" is shown to be inconsistent with reality renders it increasingly likely that the Appellant was merely giving his theory of how the murder was committed, sometimes using the first person because he was trying to imagine himself in the position of the murderer, but often using the third person when referring to "the perpetrator".
- 40 79. Third, the approach of the CCA was implicitly to place itself in the position of the jury rather than to ask whether there was a fair chance that if the non-disclosed information had been provided, the Appellant might have been acquitted. The teleological reasoning of the CCA is illustrated by the following:

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- (a) The CCA's statement that a false confession about the wrench would have been "but one more inconsistency" [107]{7AB2533-34}. The jury, with this information, might well have decided that this was one inconsistency too many.
- (b) The CCA's conclusion that the non-disclosure of Ms Englehardt's original handwritten statement did not deprive the Appellant of a fair chance of acquittal relying "particularly" ([127]{7AB2538}) on Ms Engelhardt's admission at the hearing before the CCA 9 years later, that she was "hopelessly confused" ([133]{7AB2539}). The CCA concluded, relying on that confusion (9 years later) that the "natural and probable" reason for the removal of those sentences in her witness statement days after the murder was her "uncertainty" ([135]{7AB2539-40}). The uncertainty of Ms Engelhardt, 9 years later, is plainly irrelevant to the cogency of the references in her witness statement made only days after the murder. Even if it were, it is impermissible for a court of appeal to place itself in the position of the jury and to speculate upon possible reasons for exclusion of critical evidence.
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- (c) The CCA's statement that the non-disclosed forensic report of absence of salt traces on the Appellant's clothing and shoes had no significance because [145-147]{7AB2541-42} "it would be open to conclude" (contrary to the evidence of Peverall, the Appellant and Ms Engelhardt) that the trousers had not been worn at the time of the killing (and therefore that they had not been washed in the salt river as the Appellant confessed). The question is not whether an adverse conclusion to the Appellant was "open" but whether there was a fair chance that if the jury had known of this information, *together with all the other information*, it would have acquitted.
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- (d) The CCA said it did not see that it was an issue of significance that Miss Barsden estimated the man she saw as 6 foot and medium build (the Appellant was 6 foot 7) ([117]{7AB2536}) because, *inter alia*, she had not been asked his height at trial. However, if her non-disclosed statement had been provided, the defence would have had the opportunity, to put that to her at trial, and point out to the jury that (apart from other significant differences) the Appellant was significantly taller than the man she saw.
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- (e) The CCA said that there were "no discrepancies" between Miss Barsden's evidence at trial and her non-disclosed sketches. This is again to substitute its opinion for that of the jury. The question was whether the Appellant lost a fair chance of acquittal. In her evidence at trial Miss Barsden did not mention whether the man she saw had a moustache or not, but her drawings clearly depicted a man with no moustache (and the Appellant had a large, and very noticeable moustache, as his photograph taken that afternoon showed).
- (f) The CCA further held that evidence that there was a person 3 kilometres from the crime scene, on the afternoon of the murder, with sufficient time to be there at the time of the murder, wearing a bandanna (the description by