

When exhibits go missing

By Stephen Ryan



It's the nightmare of every prosecutor and occasionally those in the civil courts also. The missing exhibit.

What has happened to it? Who is responsible? What does its absence mean for the case?

These are just some of the questions that swirl in the mind while the stomach churns.

In generations past it could be arranged for a drug or a gun or some other pesky piece of evidence to go missing, but in this day and age can it happen? You bet, as one Crown prosecutor recently learned.

The charge was murder and one of the facts relied on by the Crown was the purchase, by the accused, of a shovel at the time of, or very shortly after, the deceased went missing.

'We purchased a replica,' explained Crown prosecutor Fiona Gray. 'And it was with all the other exhibits upstairs in the King Street complex.'



While there are restrictions on when lawyers can enter and depart the King Street courts, no such restrictions apply to contractors.

'The shovel had been sitting there for

maybe four weeks before we were due to tender it,' Fiona explained. 'The OIC was due to give evidence that day and when we went to get it it was gone.'

Fiona went to the Sheriffs while the detective in charge of the investigation found a replacement online at a Bunnings. He had a colleague purchase the new exhibit and then deliver it as only the police can.

'They came screaming around the corner with lights on, but no sirens and I was out the front where they practically threw it at me,' Fiona said.

While all of this was going on the Sheriffs had checked their security cameras and identified a suspect.

'You could see [the contractor] looking around and spot the shovel and walk out with it. So we knew who it was,' Fiona explained.

As it turned out, the contractor was

probably tipped off and snuck back into the building – almost certainly using the judges' entry – where he returned the shovel without anyone noticing. It wasn't too late to tender, but it was too late to avoid the investigation.

'He was charged,' Fiona said. 'He made full admissions and got a good behaviour bond.' She offered to make a victim impact statement due to the stress caused by the incident, but accepted one of the shovels as a souvenir in her chambers instead.

'I can laugh about it now, but I can tell you it caused a lot of stress,' she said. 'It could have been the murder weapon. He didn't know.'

One far more brazen theft of an exhibit occurred mid-trial in Newcastle more than 20 years ago.

Kevin John Gallagher was a notorious bank robber and gunman who led a band of crooks known as The Big Nose Gang in the 1990s.

The gang struck a number of credit unions and buildings societies in the Hunter pocketing hundreds of thousands of dollars.

Gallagher was so dangerous and devious that heavily armed officers in body armour were called up from Sydney complete with air support to arrest him outside a bank in Swansea. He was about to storm the bank when officers moved in.

Security for the trial the following year was unprecedented. There were concerns Gallagher would commandeer his henchmen to intimidate witnesses, jurors and even the judge who lived in Sydney, but had a property in the Upper Hunter.

The trial proceeded under strict security and Gallagher testified in his defence.

A key piece of evidence was a document Gallagher drafted in his gaol cell at Long Bay. It was a crib sheet on how to rob some of Newcastle's banks with notes on which ones had 'anti-bandit screens', time delay locks and the best days to conduct the robberies (to get the biggest haul of cash).

It also included a rating system of the banks' security from 'joke' to 'easy' to 'hard.' The Newcastle Permanent Building Society had three jokes: the Edgeworth, New Lambton and Swansea branches.

Gallagher was under cross-examination about the document when a woman staged some sort of fit in the public gallery. With everyone already on high alert, His Honour fled to his chambers, Corrective Services grabbed Gallagher and dragged him downstairs while the courtroom was cleared immediately.

When the trial resumed the Crown was unable to locate the document. It had been in the witness box, but couldn't be found. Corrective Services later informed the prosecution that Gallagher repeatedly

IN THE ABSENCE OF THE JURY

CROWN PROSECUTOR GRAY: Your Honour, if the detective could step down, there's something I wish to raise, your Honour.

HIS HONOUR: Detective, yes.

CROWN PROSECUTOR GRAY: We had an incident in relation to the Crown's chambers where an exhibit went missing.

HIS HONOUR: An exhibit went missing?

CROWN PROSECUTOR GRAY: Yes. You might have noticed there was some movement with the shovel this morning in terms of the courtroom and so forth. The original one that the police had purchased went missing over the last few days. I made enquiries with some sheriff's office and they've watched the CCTV footage. It appears that a contractor who was provided unrestricted access to the Crown's chambers removed it. Further enquiries have been made in relation to that. But I'm just advising your Honour because we managed to do a quick turnaround and get another one but, given that it raises issues about the security of exhibits and so forth for the trial, I just thought I should raise it on the record.

HIS HONOUR: So just to be clear, it was a proposed exhibit at that stage, it wasn't an exhibit?

CROWN PROSECUTOR GRAY: Yes, your Honour, correct, yes, your Honour, sorry.

HIS HONOUR: It's something that the Crown intended to tender?

CROWN PROSECUTOR GRAY: Yes. And luckily it was an example of what, on the Crown case, the accused had purchased rather than, for example, a piece of carpet that had DNA on it or something like that but it was kept in the same area of the Crown's chambers where those exhibits were.

HIS HONOUR: Is there anything that needs to be done or noted?

CROWN PROSECUTOR GRAY: I'm just bringing it to your Honour's attention. I don't require your Honour to do anything else in relation to it. It's been raised with the sheriff's office who are undertaking an investigation in relation to it.

HIS HONOUR: Mr McMahon, was there anything you wish to say in relation to that?

McMAHON: No, your Honour.

HIS HONOUR: Thank you for raising it, Ms Gray. But I'm sure you'll keep Mr McMahon informed--

flushed the toilet in his cell after he'd been taken downstairs.

Fortunately, the Crown's instructing solicitor had made a photocopy – just the one – the night before. The trial resumed, but there was more drama to come.

A juror was followed home and found a note on the windscreen of her car stating: 'plead not guilty in the Gallagher trial bitch or you are dead.'

The trial was aborted and later transferred to the Downing Centre's lower ground level courtrooms. He was convicted and later sentenced to 18 years.

While Gallagher was a hardened criminal who spent 40 of the first 58 years of his life behind bars, at the other end of the spectrum was former Attorney-General and Supreme

Court Justice Jeff Shaw.

Shaw had not even served two years on the bench when he crashed his Alfa Romeo into a parked car near his Sydney home in October 2004.

He was taken to hospital and a blood sample was taken before it somehow wound up in Shaw's possession upon his discharge.

There were investigations by the police and the Police Integrity Commission. Eventually the sample was surrendered and Shaw was charged with drink driving and negligent driving. His resignation followed. Director of Public Prosecutions Nicholas Cowdery KC declined to pursue a charge of perverting the course of justice.

The mystery of the missing blood sample was never solved.

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