

SUPREME CT.

R. v. CRUZ

[1988–90 Gib LR 115]

R. v. CRUZ

SUPREME COURT (Alcantara, A.J.): October 31st, 1988

Evidence—expert evidence—expert witnesses—fingerprint evidence—police officer to be admitted as fingerprint expert only if advanced fingerprint course passed and fingerprint work undertaken at every opportunity—Home Office directive relating to fingerprint experts in England (requiring 5 years' continuous dedication to fingerprint comparisons) not binding in Gibraltar

The defendant was charged with burglary.

The defendant was charged with three offences of burglary, said to have taken place between January 1985 and July 1987. His fingerprints were taken in connection with another matter in July 1987, and were found to match those found at the scene of all three burglaries; he was duly arrested and charged. There was no further evidence linking the defendant with any of the burglaries.

The defendant submitted that (a) none of the witnesses that the prosecution proposed to call to give evidence on the fingerprint comparisons met the standard laid down by a Home Office directive for fingerprint experts in England, as none of them had spent the requisite continuous length of time making fingerprint comparisons; and (b) that directive was

binding on the Gibraltar courts, with the result that the evidence that the prosecution proposed to offer was of insufficient quality.

The Crown submitted in reply that (a) the four police officers it proposed to call as expert witnesses were experienced at making fingerprint comparisons; (b) the directive was only to be taken as a guideline, and was not binding on Gibraltar courts, which had a discretion as to whether to admit a witness as an expert witness; and (c) if none of the Gibraltar police officers was admitted as an expert witness, forensic experts would have to be procured from the United Kingdom, which would be a difficult task.

Held, refusing to admit the police officers as expert witnesses:

The Home Office directive was not binding on the Gibraltar courts; nevertheless, there was no reason why the standard for fingerprint experts in Gibraltar should be much lower than that in England. In a small community such as Gibraltar, it was unrealistic to expect any one person to be continuously dedicated to fingerprint comparisons for five years, as was stipulated in the directive as a requirement for expert witnesses; however, provided that a police officer had passed an advanced fingerprint course (or equivalent), and involved himself with fingerprint work whenever the opportunity arose, there was no reason that his evidence on fingerprint comparisons might not be admitted by a trial judge. Although all four of the police officers who were to be called as witnesses were qualified scene-of-crime officers (and thus capable of lifting fingerprint impressions), none was at present sufficiently qualified to be called as an expert witness (paras. 10–13).

J.M.P. Nuñez, Crown Counsel, for the Crown;
C. Finch for the defendant.

1 **ALCANTARA, A.J.:** The defendant is charged with three offences of burglary which are said to have taken place on January 9th, 1985; on a date unknown between March 7th–10th, 1986; and on July 4th, 1987, respectively.

2 In the first burglary—that of January 9th, 1985, which was of a bar—two latent fingerprints were found on a “King Edward” cigar box which was on top of the bar counter. In the second burglary—of a private dwelling-house, on an unknown date between March 7th–10th, 1986—a fingerprint was found on a small kitchen window inside the premises. Those two crimes remained unresolved. In the third burglary—on July 10th, 1987, of a night club—the scene-of-crime officer will say that he later found, on July 23rd, 1987, two fingerprints on an orange carton which he had found on top of the bar counter of the night club.

3 On July 9th, 1987, fingerprints were taken from Dimitrious Cruz with his consent in connection with another matter. On July 20th, 1987, the

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defendant was arrested on suspicion of the first burglary. He was subsequently charged with all three burglaries. The fingerprints that are alleged to have been found inside the premises are the only evidence connecting the defendant with any of the three burglaries. There is no other evidence.

4 Mr. Finch for the defence is prepared to make a formal admission that the burglaries took place, but, at practice directions on May 10th, 1988, he gave notice to the following effect on the question of points of law or on the admissibility of evidence: “[The] defence will challenge [the] sufficiency of fingerprints.”

5 When the case came before me for trial, and after the jury had been duly empanelled and sworn in, I was asked to rule whether the witnesses that the prosecution intended to call on the subject of fingerprints would be considered expert witnesses. Counsel for the defence argued that a minimum standard had been laid down in England, and that none of the police officers who would be giving evidence met that standard. The court should not accept them as experts.

6 A telefax dated October 28th, 1988 from the Fingerprint Bureau, New Scotland Yard to Interpol Gibraltar (Fingerprint Bureau) was produced, the relevant part of which reads:

“Before a person shall consider himself to be a fingerprint expert he should have at least five years *whole and continuous* service spent in making fingerprint comparisons . . . [A] fingerprint [technician] who [has] these qualifications should then be permitted to attend the advanced fingerprint course . . . then he will be considered suitable to give fingerprint evidence in [a] court of law as to his opinion of his finding of fingerprint comparison, provided he is still engaged in full time duty of making fingerprint comparisons.”

The above emphasis is mine.

7 The above excerpt, I am told, comes from a Home Office Directive of 1967. The reason for such a high standard can be found in *Archbold's Criminal Pleading Evidence & Practice*, 42nd ed., para. 14–10, at 1012 (1985), where it is stated that “identification by fingerprints by a person expert in such prints is allowed, and may be sufficient, even though the only evidence of identification.”

8 Mr. Nuñez for the Crown argued that the Home Office directive is only a guideline and has no application to Gibraltar. He pointed out the difficulty of procuring forensic experts from the United Kingdom. It was for the court to decide whether to accept any witness as an expert.

9 The prosecution intended to call not one fingerprint expert but four. They gave evidence as to their experience and qualifications. Inspector Dennis John Guy went to a six-week fingerprint course in 1971 at Peel

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House, together with Metropolitan Police officers. On his return he took over the Fingerprint Department, where he stayed for five or six years. He has lectured on fingerprints to recruits. He is no longer in the Fingerprint Department, but comes into contact with fingerprints as he is the officer in charge of the C.I.D. Support Unit. In cross-examination he admitted that he was not aware of the 1967 Directive, and also admitted that at no time has he been wholly and continuously in fingerprints.

10 Sergeant David Comley went on a six-week fingerprint course at the Wakefield Police Bureau. On his return, he was attached to the Support Unit, where he carried his duties as scene-of-crime officer. He admitted not being aware of the Home Office Directive. He likes fingerprints, and keeps up to date with UK publications. He also admitted that his duties are not exclusively fingerprint-related.

11 Constables Mario Busto and Charles Head also went on fingerprint courses, but their qualifications and experience are not as high as those of Sgt. Comley. I will therefore not enter into further details.

12 There is no doubt that none of the four officers would qualify as a fingerprint expert in England for the purpose of giving “his opinion of his finding of a fingerprint comparison.”

13 I have come to the conclusion that the Home Office Directive is not binding on me, but that is no reason why our standard of what constitutes an expert should be lower—or much lower—than in England. Using the Home Office Directive as a guideline is useful, provided that certain realities are taken into account. In a small community such as Gibraltar one cannot expect to find a police officer to be wholly and continuously dedicated to fingerprints. Generally speaking, the Gibraltarian is a “jack of all trades” within certain parameters, but just because one is a jack of all trades does not exclude the proposition that one might be particularly good at one particular trade. If a police officer is particularly good at fingerprints, there is no need for him to be continuously and wholly dedicated to it, provided that he delves into it at all opportunities. Provided that he does that, and that he passes the advanced course or an equivalent course, there is no reason why a trial judge might not admit his opinion evidence as coming from a fingerprint expert.

14 In the present case I am unable to accept any of the police officers as an expert on fingerprints and I so rule. If I may say so, it appears that Sgt. Comley has the potential of becoming one if given the opportunity. All the police officers are perfectly qualified as scene-of-crime officers, which includes being qualified to lift fingerprints.

Order accordingly.