

STRUCTURE OF CROWN ORAL SUBMISSIONS – 21/10/26

Ms Laracy

1. Approach to this appeal:
 - a. Overwhelming case; GW's ID from Montage one part [842], [945]
2. *Admissibility* of Montage ID: determined by *Turnbull*: represented existing law; prosecutions resting wholly or substantially on fragile IDs.
 - a. Some flaws: look to other circumstantial evidence to test overall reliability. Far removed from vulnerabilities and weak cases in *Turnbull*.
 - b. Crown always relied on mutually supporting totality of large volume to prove case. Defence relied on 3 "direct" pieces of evidence to try and undermine.
 - c. Montage B doesn't lie at the heart; doesn't contaminate rest of the evidence; could never have proved case itself (Crown and Judge never suggested that).
3. Some discrete references and factual points.

Mr Baker

1. Law
2. Science
3. Pre-trial challenge to Montage B
4. Montage B did not predispose
5. Circumstances of GW's identification do not render it inadmissible
 - a. Three-and-a-half month delay
 - b. Single photograph
 - c. 11 January interview
 - d. Video shown 3 February and media coverage
 - e. Good evidence GW was never shown Montage A
6. Reliability of identification was squarely before the jury
7. Summing up adequately conveyed the need for real caution
8. Reliability is properly supported by independently admissible and probative identification evidence

Ms Laracy

- Structure and emphasis of the Crown case from the closing. See **Addendum 2** to Crown submissions: all of the evidence; ID from Montage not the central evidence (not in opening); could never have convicted on it; not outweighed by Crown.
- Sources for totality of the evidence – refs: Prosecution closing; Part III of CA judgment from [935]; and Appendix 2 to the Crown's Court Appeal submissions (Summary Statement *and* Compendium)
- Circumstantial case in light of proviso argument: para [842]. Witness descriptions, including GW's, and all other evidence (eg. hair, motive) & Part III untouched. Can't revisit & make findings on complex trial issues; appeal onus on appellant.
- Strength of Crown case: motive (3Es), opportunity, descriptions of the man, observed behaviour, evidence *can* place on the jetty, DNA, movement/lies NY day, painting and wind vane, forensics on *Blade*, elimination (another lone man at Furneaux or a ketch = not a "reasonable possibility").