**DNA evidence** – *R. v Killick* [2020] EWCA Crim 785, (2020) 84 J.C.L. 513, CA, 11 June 2020.

CCTV footage from a hairdressing salon that had been burgled showed the burglar, whose face was obscured by a motorcycle crash helmet, search, unsuccessfully, for something he had dropped. A screwdriver was later found in the area where the burglar had been searching. On scientific examination, a full DNA profile matching the respondent was found on the screwdriver. At interview the respondent did not provide an explanation for the presence of his DNA, but commented on the failure of the police to show him the screwdriver itself or a picture of it.

The recorder had been entitled to allow the defence’s submission of no case to answer. While the fact that DNA is on an article left at the scene of the crime can be sufficient without more to raise a case to answer where the match probability is sufficiently high (viz one in a billion or similar), each case will turn on its own facts. In the instant case, there was an overwhelming inference that the screwdriver had been dropped by the burglar and the jury could be sure that the DNA on the screwdriver originated from the respondent, but there was no other evidence connecting him to the crime. The failure of the respondent to provide an explanation for the presence of his DNA on the screwdriver could not in itself provide additional support for the prosecution case on a submission of no case to answer. The scientific evidence could not determine, inter alia, whether the DNA was deposited by direct or indirect transfer, when it might have been deposited or whether the burglar seen on the CCTV footage would inevitably have deposited DNA. In the context of an item as readily portable as a screwdriver, this absence of evidence was significant, and no reasonable jury could safely exclude the possibility that the respondent’s DNA had been deposited on the screwdriver otherwise than in the course of or in connection with the burglary.

**Key cases cited**: Considered – *R. v Tsekiri*, CLW/17/09/2, [2017] EWCA Crim 40, [2017] 1 W.L.R. 2879, CA.

CLW comment:

In *Tsekiri*, the Court of Appeal held (at [14]) that the presence of a DNA profile on a moveable object found at a crime scene may be sufficient alone to support a conviction where the random match probability is in the region of 1:1 billion. Whether it will do so “depends on the facts of the particular case” (at [23]). The present judgment, like the recent decision in *Jones* ([2020]EWCA Crim 1021, unreported, C:W/20/….), illustrates the importance of giving careful consideration to the expert’s conclusions. As in *Jones*, there was no dispute that the DNA belonged to the defendant. The issue was when and how it came to be deposited. Here the scientist noted that traces of a minor profile were also present on the screwdriver, though these were insufficient for comparison purposes. She could not comment on when the defendant’s DNA might have been deposited on the screwdriver, or whether he was the most recent person to have done so (at [8]). In contrast with *Jones* and *Tsekiri*, the evidence was also “silent as to possible methods of transfer” (at [24(3)]) and made no mention of the distinction between primary and secondary transfer. The prosecution had submitted that, in the absence of any explanation by the defendant as to how his DNA came to be present on the screwdriver, the evidence was sufficient to establish a case to answer. The defendant had explained in interview that he previously worked as a roofer, using tools supplied by his employer. He commented that he had not been shown either the recovered screwdriver or a photograph of it, and the Court of Appeal had some sympathy with the defence submission that he could not be expected to account for how his DNA came to be on a generic object (at [24](2)]. As the experts suggested in *Jones*, where secondary transfer cannot be ruled out it may simply be unrealistic to expect a defendant to account for the ways in which his DNA might have been deposited on a moveable object.