

# *Zak Coronial Inquest and the Interpretation of Photographic Evidence*

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## ***Abstract***

Criticism regarding the objectivity of photographic evidence when used during judicial hearings is beginning to emerge within the forensic and scientific literature. The second coronial inquest into the death of Romuald Todd Zak is a case that highlights the dangers of photographic evidence when inappropriately used to support forensic evidence. The Western Australian State Coroner, Alastair Hope, was highly critical of evidence presented by forensic experts during the second inquest. This article examines Hope's findings and discusses issues associated with the interpretation and representation of photographic evidence.

## **Introduction**

Photographs and other visual evidence are regularly used within the criminal justice system for numerous purposes (Mnookin 1998; Feigenson 2010; Porter 2011). In general terms, photographic evidence may either: (i) support oral evidence and findings using visual communication methods to explain methods and concepts (ie crime scene photographs); (ii) provide evidence using images that record events or incidents either statically or via a witness (ie CCTV cameras or mobile phones); or (iii) provide evidence that is derived by the interpretation of photographs. This article focuses on the latter function of photographic evidence; that is, when forensic evidence is obtained by the examination of photographs. Despite the prevalence of photographic evidence within the judicial system, there is little known regarding photointerpretation methodologies and any method of evaluating the reliability of the results. This article begins by introducing contemporary visual culture concepts that relate to forensic evidence and raises several prominent issues. Next, the article uses a case example from Western Australia (WA) in which forensic evidence derived from the examination of photographs was presented to the WA Supreme Court and later in a fresh coronial inquest. The Coroner was highly critical of this evidence and his report was used to frame issues regarding the reliability or suitability of photointerpretation when used as forensic evidence.

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## Photographic evidence and photointerpretation

Living within a modern society we rely heavily on photographic images to inform us about the world around us. In some respects, we have become a community obsessed with images. The social network site Facebook™ (2012) reports that, on average, more than 250 million photographs are uploaded daily onto the site. That is in excess of 93 billion photographs uploaded onto Facebook™ per year and that is only images on this particular social network site. The increasing profusion of photographic images within society makes it almost impossible to avoid engaging repeatedly on a daily basis with images of some form or other. Interacting with photographs has created cultural practices of representation that have developed from invented visual codes which have become conventional (Amann and Knorr Cetina 1988; Clarke 1997; Porter 2007; Allamel-Raffin 2011; Barrett 2012).

We naturally tend to seek an understanding from photographs through a conventional visual culture framework. However, does this high degree of familiarity with photographs mean we automatically become skilled visual communicators? Barrett (2012:170) notes:

Ease of information retrieval from a style of picturing is mistaken by a culture for pictorial accuracy because the viewers are unaware of the representational system within their own culture; they are too familiar with it to notice it. A style becomes so easily readable that it seems realistic and natural – it seems to be the way the world is.

Barrett is suggesting that while the community actively communicates visually as a cultural norm, the understanding of how this form of communication affects our thinking is not realised by most viewers. Furthermore, the effortless retrieval of visual information is easily transposed into a comfortable perception of reality. This perception, however, does not automatically result in accuracy, despite the familiarity and confidence of the viewer.

Television and the print media exploit this visual culture condition by encouraging news audiences to accept images as proof that their news stories are factual. The viewer consuming the visual material usually has no difficulty in relating the story's oral and visual narrative with the images and then relating this information to reality. A sense of factualness<sup>1</sup> is developed by the ease and confidence of the retrieval of information and the knowledge that cameras function with mechanical objectivity (Daston and Galison 1992; Mnookin 1998; Tucker 2005; Porter 2007). The newsworthiness of stories is often based on whether it can be supported by images so the audience can gain an acceptance of truthfulness to the story, in addition to being more interesting or entertaining. Furthermore, if there is no vision of the news story, the level of believability and, therefore credibility, of the news bureau, may be perceived to be compromised. A common tactic by television news, if there are no images of the actual incident being reported, is filming a reporter standing in front or near the area of interest. They invent the vision to support the story and enhance the level of believability, regardless of the degree of artificiality of the images in relation to the actual story. In some cases, file footage is used that may be common in subject matter, but has no direct relevance to the story itself. Believability appears to be the media's objective and currency in contrast to truth, and the perception of reality is heavily reliant on the presentation of images. Ivens (1969:94) sums up this phenomenon between how a contemporary sense of reality is reliant on photographs as follows:

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<sup>1</sup> The concept of factualness also relates to notions of truth.

The nineteenth century began by believing that what was reasonable was true and it wound up by believing that what it saw a photograph of was true – from the finish of a horse race to the nebulae in the sky.

Science is also not immune to this condition. Science was developing a positivist ideology in the 19<sup>th</sup> century, at the same time photography was invented. Positivism is based on using objective data and rejects any notion of subjectivity. Photography has proved to be a valuable tool for the positivist. It is able to record fine detail of specimens, be attached to scientific instruments and record items that are invisible to human vision. Barrett (2012:166) discusses this relationship between photography and science:

Positivist investigators pursue facts – empirically verifiable and measurable – which would yield certain knowledge that was believed to be unbiased by the subjectivities of observers. Positivism was a supposedly disinterested and rational method of inquiry that assumed there was an external reality that could be neutrally observed by a detached observer. Within the intellectual milieu of positivism, photography was assumed to be the new scientific instrument that would itemize objective truths.

The application of photographs as an objective truth or silent witness works very well within a positivist construct and, in particular, as a disinterested witness for forensic science. Combined with the ease with which viewers accept photographs as a reliable representation of reality, photographs as evidence can readily become a highly credible form of evidence. This confidence associated with photographs recording reality faithfully, and further supported by the concept of mechanical objectivity, is often referred to as ‘photographic truth’ (Clarke 1997; Sturken and Cartwright 2001). It is also found in the general popular expression ‘the camera never lies’.

However, while photographs are recorded by a mechanical device, they are also operated subjectively by photographers who may use a range of visual techniques to communicate a concept (both from a compositional and technical perspective). Furthermore, photographs require interpretation by the viewer. The concept of ‘photographic truth’,<sup>2</sup> based on and supported by a positivist ideal, has largely been considered by contemporary visual culture scholars as a myth (Sturken and Cartwright 2001; Tucker 2005; Porter 2007; Porter and Kennedy 2012). While lay viewers of photographic images<sup>3</sup> may have the belief and confidence that the meaning they gain from viewing a particular photograph corroborates with reality (Clarke 1997), the process by which they have drawn these conclusions relies on several subjective conditions comprising of various visual codes within a cultural context. The concept that photographic images are objective cannot be maintained, despite the confidence and the familiarity of viewers with this type of visual communication. Photographic images are constantly influenced by subjectivity and do not simplistically mirror reality.

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<sup>2</sup> The term ‘photographic truth’ is a construct which suggests that due to the mechanical objectivity of the camera and the fact that cameras can only record objects that exist in the real world, the image must replicate the real faithfully. This notion however, does not consider the interpretation of the viewer of the photograph and any deliberate or unintentional creative and technical craftsmanship by the photographer during the image exposure (ie lighting, framing, image perspective, filters, exposure, focus, composition etc). Photographic truth mirrors the idea that cameras never lie and is still a popular lay view. However, the contemporary view of photographic truth by visual culture scholars is that this concept is, for the most part, a fallacy, and establishing the ‘truth’ is often far more complex than is perceived by the viewer of the images.

<sup>3</sup> The expression ‘photographic images’ refers to all types of images recorded by a camera and include: still photographs from film cameras, digital images from digital cameras, video or film (moving images), and images sourced from CCTV cameras.

Nevertheless, photographic evidence remains a valued practical tool when expressing forensic evidence within a court of law and, like many other contemporary visual applications, its veracity is seldom challenged. Recent work has described photographic evidence as having differing levels of modes of inquiry and outcomes (Porter 2011). However, we actually know very little about determining the accuracy of photographic evidence and less regarding their influence on jurors' decision-making (Feigenson 2010; see also Kahan, Hoffman and Braman 2009 regarding the United States (US) Supreme Court case *Scott v Harris*, 127 S Ct 1769 (2007)).

Ambiguities associated with photographic interpretation are expressed in an essay by Errol Morris (2011) called 'Will the Real Hooded Man Please Stand Up?'. Morris discusses whether a man claiming to be the hooded man in the Abu Ghraib prison photographs was, in fact, the man depicted in photographs.<sup>4</sup> Morris comments on the power of the narrative that ensues when the man claiming he is the person depicted in the images tells his story and then provides the images as photographic evidence. After Morris discovers he is not the Hooded Man, as he claimed, Morris (2011:93) makes this insightful comment:

But the mistaken identification was driven by The Claw's<sup>[5]</sup> own desire to be the iconic victim, to be The Hooded Man, and our own need to believe him. It is an error engendered by photography and perpetuated by us. And it comes from a desire for 'the ocular proof', a proof that turns out to be no proof at all. What we see is not independent of our beliefs. Photographs provide evidence, but no shortcut to reality. It is often said that seeing is believing. But we do not form our beliefs on the basis of what we see; rather, what we see is often determined by our beliefs. Believing is seeing, not the other way around.

'Believing is seeing' — if Morris's observations are correct, photographic evidence presented and narrated by expert witnesses may wield significant influence on the manner in which it is understood and, in consequence, on the outcomes of legal proceedings. This point goes to the heart of the issues presented in this article. Furthermore, if the photographic evidence is misleading or the interpretation erroneous, then significant dangers to the integrity of the judicial process may arise.

Morris (2011) further argues:

Photographs attract false beliefs the way flypaper attracts flies. Why my scepticism? Because vision is privileged in our society and our sensorium. We trust it; we place our confidence in it. Photography allows us to uncritically think. We *imagine* that photographs provide a magic path to the truth.

What's more, photographs allow us to think we know more than we really do. We imagine a context that isn't really there. In the pre-photographic era, images came directly from our eyes to our brains and were part of our experience of reality. With the advent of photography, images were torn free from the world, snatched from the fabric of reality, and enshrined as separate entities. They become more like dreams. It is no wonder that we really don't know how to deal with them. (Morris 2011:92)

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<sup>4</sup> The hooded man photographs are a series of photographs taken by US soldiers in the Abu Ghraib prison during the Iraq conflict. The images, taken in 2003, depict an Iraqi prisoner standing on a cardboard box, wearing a hood and a blanket with a hole cut in the middle. The subject has his arms extended out with electrical wires attached to his fingers. The images were suggestive of torture by US soldiers. The hooded man image has become an iconic image of the Iraqi war.

<sup>5</sup> 'The Claw' was allegedly the name given to the Qaissi (who was claiming he was the hooded man) by US soldiers while he was in the Abu Ghraib prison (due to his deformed hand).

Morris presents a significant point in relation to photographic evidence. That is, we do not really know how to deal with photographs and their relationship to reality. What is more disconcerting is that photographs are trusted as mirrors of reality through the false notion of photographic truth and we are unaware of how these dangers associated with this thinking can overwhelm photographic evidence (see also Porter and Kennedy 2012; Feigenson and Spiesel 2009; Feigenson 2010). Photographic evidence can provide value to court proceedings and when explaining forensic science evidence; however, we should be cognisant of any dangers this type of evidence may introduce to the judicial process. Feigenson (2010:149) suggests '[p]hotographic evidence has generally yielded more robust effects than have other media on ultimate judgements'.<sup>6</sup> This article will examine the Coroner's findings in a recent WA case (Hope 2007) and discuss the issues associated with the use and interpretation of photographs.

## **Inquest into the death of Romuald Todd Zak**

The investigation into Romuald Zak's death included two coronial inquests and a WA Supreme Court hearing regarding the findings made in the first inquest. There were also various reviews conducted by the WA Police and the Corruption and Crime Commission of WA at the request of Zak's family. The second and final inquest into the death of Romuald Todd Zak was investigated by State Coroner Alastair Hope at the Perth Coroners Court in 2007. Hope's findings indicated Zak's death occurred on or about 21 May 1997 in the grounds of Graylands Hospital as a result of ligature compression of the neck (hanging) by way of suicide. Hope (2007:45) reported that Zak had suffered from mental health problems with a history of suicide thoughts.

### *New evidence*

In 2006, an application was made by the deceased's family to the Supreme Court to render the original inquest findings void. After hearing a range of new factual material in the Supreme Court, Murray J ordered the original inquest findings void and a fresh inquest to re-examine the evidence surrounding Zak's death. State Coroner Hope's finding is the result of the second inquest. The new evidence introduced to the Supreme Court and later in the second inquest was suggestive that Zak may have been murdered, rather than having committed suicide.

Several new reports were tendered during the Supreme Court hearing and the second inquest, and according to Hope, these reports relied heavily upon the photographs taken at the scene and during the post-mortem. Coroner Hope (2007:7) reported that the net effect of the new factual material was that:

- there were injuries on the deceased that had not been identified at the post-mortem examination;
- the deceased's body had been moved after death;
- the deceased had died a relatively short time prior to his body being found; and
- the ligature found on the neck of the deceased may have been put in place after death.

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<sup>6</sup> In this context Feigenson refers to 'photographic evidence' as still photographs in comparison to other forms of visual evidence (video, CCTV, animation etc).

The case commentary in this article relies on the information provided in the Coroner's report (Hope 2007) and will focus on three components of the forensic evidence because: (1) the evidence relied on interpretation of photographs; (2) Hope was quite critical of the evidence and discusses the expert evidence extensively in his report; and (3) conclusions derived from photographs was found by Hope to be erroneous.

### *The forensic pathology evidence*

Dr Cadden, the forensic pathologist who conducted an examination of the scene and performed the post-mortem, gave evidence that indicating that the markings on the body were post-mortem artefacts and could all be explained without suspicion. He further suggested that a holistic examination of the scene and the post-mortem 'was consistent with the death resulting from self-hanging' (Cadden quoted in Hope 2007:8).

Hope (2007) indicated in his report that to an untrained eye the appearance of the deceased was unusual and may cause suspicion. Evidence was also heard from a forensic pathologist, Dr Lawrence, who examined the scene and post-mortem photographs in addition to Cadden's report. Lawrence supported Cadden's findings. Associate Professor Hilton, also a forensic pathologist, provided a report on behalf of the deceased's family. Hilton concluded that he also supported the original findings of Cadden. Hope noted that the forensic pathologists were experienced at examining cases of hanging deaths and also on matters involving homicide. The Coroner indicated that he supported the findings of Cadden on a number of grounds (Hope 2007:12–20), including his extensive experience relating to this type of incident.

Hope (2007) indicated that Murray J (in the Supreme Court) referred to a report provided by Mrs Zak from Professor Maciej Henneberg. Henneberg is described as a biological anthropologist and anatomist. Hope's report provides a quotation from Henneberg's report in relation to his findings:

... significant struggle preceding death and serious head injuries that could lead to the death of Mr Zak. Therefore, there are no grounds for suspicion of suicide while evidence of physical abuse possibly leading to homicide or murder is substantial. Since there is no evidence of struggle under the tree where the deceased has been found, the injuries had to be inflicted in some other location and the body moved to the place it was found in. (Henneberg quoted in Hope 2007:35)

Henneberg's findings, as indicated in the Coroner's report, appear to be in contrast to the forensic pathologists, including Cadden who witnessed the scene and body first-hand. Hope (2007) intimated that Henneberg's report 'was based solely on photographs provided to him and information relayed to him by Mrs Zak' (Hope 2007:36). Hope further reported:

In evidence Professor Henneberg accepted that he is not a forensic pathologist and he is not qualified to comment on cause of death, injury interpretation or the specifics of decomposition, although in fact both in his report and in his oral evidence he did so. (Hope 2007:36)

This is an interesting point made by the Coroner that raises more questions than answers. Why would an expert make comment on areas outside his expertise with the knowledge he is not qualified to express opinions on forensic pathology? Hope (2007) continued:

In respect of the opinion evidence of Professor Henneberg, it appears to have been based on very limited information and many of the opinions stray outside his own area of expertise. He sought no guidance from the post-mortem report which contained a substantial amount of

objective information which was not, and could not have been, contained in the photographs which he saw. (Hope 2007:37)

There are several issues arising from this evidence. First, the exclusive reliance on the photographs to form an opinion places a significant demand on the photointerpretation accuracy and the photointerpretation skills of the expert. The interpretation was also considered without proper contextual information that the forensic pathologist's report may have provided (Hope 2007). Sourcing facts directly from photographs may also suggest that evidence and the information captured in the photographs is implicit. This thinking is aligned with a misunderstanding of the concepts associated with photographic truth, and confidence associated with photographic viewing can inappropriately become the threshold of facts without a suitable forensic evaluation of the evidence. Second, the comment in the report that '[s]ince there is no evidence of struggle under the tree where the deceased has been found, the injuries had to be inflicted in some other location and the body moved to the place it was found in' (Henneberg quoted in Hope 2007:35) relies on the absence of evidence in the photographs.

The concept of evidence based on an absence of evidence is analogous to suggesting that when no fingerprints are found on an item or a weapon, this proves the person did not touch the item. Henneberg's statement also assumes that if there was a struggle, then evidence of a struggle would be visible in the scene photographs. There is no basis to support this hypothesis, except by an assumption that signs of a struggle would become visible if it occurred. Henneberg's statement regarding no signs of a struggle is only supported by his previous description of the deceased's injuries. The 'no signs of a struggle' hypothesis is also conditional on the accuracy of the expert's accompanying description regarding the injuries. As Hope pointed out in his report, Henneberg was not qualified to make an opinion on injuries or cause of death, and his views were also in strong contrast to the forensic pathologists. Hope's findings that the death was by way of suicide by hanging could also be consistent with no signs of a struggle.

### *The entomology evidence*

Similar issues arose with the new evidence involving an estimation of the post-mortem interval (PMI) using entomological evidence.<sup>7</sup> Hope reported that the entomology evidence was also one of the matters taken into account by Murray J to render the first inquest findings void (Hope 2007:29) and that evidence was further presented during the second inquest. Hope (2007:29) quoted Murray J in his report in relation to this evidence:

Associate Professor Dadour provides a report effectively as a forensic entomologist. Using the photographic evidence, he estimates that the deceased was in the place where he was found for a minimum of 24 hours, but no longer than 48 hours after his death to the time when the photographs were taken.

According to Hope (2007:29), the significance of the forensic entomologist's evidence was that the estimated time of death of no longer than 48 hours raised questions between the time the deceased left Graylands Hospital on 21 May 1997 and when his body was found and photographed on 27 May 1997. The unaccounted time between the estimated time of death and when the deceased left hospital was the issue raised by the new entomology

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<sup>7</sup> Entomology is the scientific study of insects and may include a broad range of science disciplines including biology, zoology, biochemistry, taxonomy, ecology and others. Forensic entomology deals with a range of forensic related investigations however the discipline prominently investigates post mortem interval (PMI) by examining the insect life cycles found on deceased victims.

evidence. Hope was critical of the forensic entomologist's observations, especially given his evidence also relied upon photographs without considering the post-mortem report by Cadden. Hope expressed concerns regarding this evidence:

Associate Professor Dadour only had access to a limited number of photographs (12) of the deceased which had been provided to him by Mrs Zak. He had no opportunity to examine the body of the deceased to attempt to locate the oldest life history stage of maggots and he did not attend the scene where the body was located. Indeed in his report to Mrs Zak he recommended that in future when insect material is evident at a death scene, a qualified forensic entomologist should attend. (Hope 2007:31–2)

Hope's (2007:32) criticisms of the limitations of the photographic material included:

Having viewed the photographs and compared that photograph with a number of other photographs taken at about the same time, I am by no means certain that the areas of white identified by Associate Professor Dadour are in fact maggots or fly eggs. I agree with observations made by Cadden and by Dr Archer [a forensic entomologist] who also were unconvinced as to the nature of the areas of white.

Dr Archer observed that she could not locate any feature which she could confidently determine to be a maggot in any of the photographs provided to her. She noted that some objects might have been maggots, but the anatomical details which would allow her to be certain were hidden.

Even more importantly, Dr Archer made the observation that even if maggots had been visible, she would not attempt to age them from photographs such as these. She noted that maggots are aged using a combination of their anatomical development stage, length and species biology.

Evidence gained from photointerpretation requires careful consideration of the limitations of the photographic evidence and whether the material is suitable for such an examination. An overly simplistic view, suggesting that if it is recorded on the photograph, the photograph will yield probative evidence, is consistent with the concept of photographic truth. The interpretation is subjective even if the evidence is presented in objective terms. Some photographs can be interpreted accurately in a straightforward manner. However, what is critical to this argument, is that not 'all' photographs can answer 'any' question (Porter 2011). A forensic analysis of the photographic material needs to consider the technical limitations<sup>8</sup> and whether image artefacts might be misinterpreted.

Hope (2007:33) raises the following concerns regarding the entomological evidence:

Of particular concern as to Associate Professor Dadour's evidence in respect of this matter is the fact that he was prepared to give an opinion as to a maximum post-mortem interval on the basis of extremely limited photographic evidence, which even if it did contain photographs of maggots, could not have allowed him to conclude that the oldest life history stage had been identified.

### *The red chainsaw evidence*

Evidence used in this case regarding a red chainsaw highlights the dangers of erroneous photointerpretation. Hope (2007) noted that Mr Robin Napper provided new evidence in the

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<sup>8</sup> In this case whether the maggots can be seen and whether the anatomical structure can be determined. Archer also provides a further limitation and that is older maggots may be hidden from the camera view by being drawn away from sunlight and located within the tissue or orifices.



form of a report and a PowerPoint™ presentation with several photographs of the scene including the deceased's body in situ. Hope (2007:23) provides an extract of Napper's report:

A branch appears to have been freshly cut on the trunk of the tree above the body (indicated by a yellow marker and a red arrow). Above the right arm (indicated by the orange marker) appears to be the back of a chainsaw, similar to the one shown in picture 15. Who did this and why? Where did the chainsaw come from? It is essential to understand the scene to see it as found without any disturbance.

The photograph referred to by Napper (Photograph '14') depicts the death scene with the deceased lying on the ground in the foreground and two labels are also included on the photograph. One label (yellow) is pointing to an area of the tree and the other label (orange) is pointing towards a red object. The red object is quite small in the frame<sup>9</sup> and is obscured by the deceased's arm and a low branch of the tree from this particular camera viewpoint. The features on the red object are indistinctive and its appearance is described by Napper as having the appearance of the back of a chainsaw (Hope 2007). Furthermore, Napper's PowerPoint™ presentation evidence also included a separate close-up photograph of a red chainsaw (Photograph '15'). This chainsaw photograph was not taken by the police during the scene investigation and appeared to be unrelated to the case.

According to Hope (2007), evidence was also provided by Detective Sergeant McDonald, from the Placer County Sheriff's Office in the US, who was approached by Napper and provided a report dated 12 March 2003. In McDonald's report, he claims that '[t]he presence of a chainsaw in the proximity of an apparently fresh/cut limb just above Zak's body is not explained' (McDonald quoted in Hope 2007:24). Hope found that the red object described as a chainsaw was in fact a Coca-Cola™ can. When a number of other scene photographs (which, according to Hope, were not available to Napper at the time he wrote his report) were examined, including different camera angles and a close-up of the Coca-Cola™ can, the red object depicted in photograph 14 was found not to be a red chainsaw. There was also an entry in the police scene log that read '1135-1 Coke can 325ml from underneath tree decreased next to' (Hope 2007:26). Hope (2007:25) further reports on a section of oral evidence given by Napper at the second inquest:

- CORONER Why did you say it appeared to be the back of a chainsaw?
- NAPPER Because when you look at the chainsaw photograph, sir, and you look at the red marking on the photograph I have, it possibly could have been the back of a chainsaw. That's the comment I make.
- CORONER It just looks like a red object to me. What was it about the red object that made you think it was a chainsaw?
- NAPPER That was the indication I had from the family.
- CORONER What was?
- NAPPER The red object was in fact a chainsaw.

There are several issues associated with the chainsaw evidence. First, there is no dispute that the suggestion that the red object in Photograph 14 is a chainsaw was erroneous once

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<sup>9</sup> The red object appears approximately five per cent of frame height. Frame height is the distance from the top and bottom of the photographic frame. Five per cent is considered to be quite small in relation to framing the object with the camera during photography.

other scene photographs were examined, which indicated the red object was in fact a Coca-Cola™ can. Second, several questions are raised regarding the photointerpretation. How can we be more confident that the red object is a Coca-Cola™ can in one image rather than a chainsaw in another? How can one photograph be ambiguous, while the other unambiguous? Can ambiguity or reliability of photographic evidence be measured? Third, with respect to the inclusion of the unrelated photograph of a red chainsaw (Photograph 15) in the PowerPoint™ presentation, it was not clear what its purpose was within the narrative.

## Conclusion

The widespread employment of photographic images in our everyday life does not automatically equate to an accurate application of photographic evidence or evidence derived or interpreted exclusively from photographs. Evidence derived from photographs in the Zak case raises several concerns regarding the accuracy of the evidence sourced from photographs. As Barrett (2012) indicated, our familiarity with photointerpretation does not necessarily produce accuracy. It may, instead, produce a false level of confidence that does not transition into reliable evidence.

In the absence of any robust physical evidence, photographs can be used in ways that resemble media uses of images to develop the impression of truth or to enhance the narrative associated with other evidence. Because we often believe what we see, presenting photographic evidence as fact can enhance the level of believability of the evidence. The obvious danger is that the evidence, based on little known facts outside the interpretation of photographs, is erroneous. Would the presentation of the photographic evidence provide further facts for the court or mislead it by implying that evidence based on a convenient truth is factual? Could an enhanced level of believability contribute to a misrepresentation of photographic evidence that could lead to a miscarriage of justice? To repeat the words of Morris (2011:93): '[b]elieving is seeing, not the other way around'.

The Zak case illustrates that erroneous photographic evidence interpretations presented in legal settings can be misleading. The Coroner was in possession of additional forensic evidence sourced from several forensic pathologists and entomologists that could be weighed against the evidence. Notwithstanding, photographic evidence can provide useful information to a court if used appropriately and incorporating safeguards against misinterpretation and misrepresentation. The issue is: what are the safeguards for photographic evidence? There is little known regarding determining the accuracy of photographic evidence and the interpretations made from images. The concept of photointerpretation is, in itself, somewhat of a conundrum. Why can we interpret with such conviction the object in some photographs such as a Coca-Cola™ can, while in others we cannot decide whether it is a Coca-Cola™ can or a chainsaw? Photographic evidence can on one hand be quite simplistic, while on the other, due to the complexity of photography and images, it can be extremely complicated. As Barrett (2012) observed, we are often too familiar with photographs to notice these issues.

## Acknowledgements

Many thanks to Gary Edmond, Jennie Nelson and Charles Crumlish for their continuing support and contribution to this research and discussion.

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