

Regina
and
Raymond Turnbull

and

Joseph Nicholas David Camelo
Regina
and
Christopher John Whitby

and

Regina
and
Graham Francis Roberts
[1976] EWCA Crim J0709-3

Before:

The Lord Chief Justice of England (Lord Widgery)

Lord Justice Roskill

Lord Justice Lawton

Mr. Justice Cusack

and

Mr. Justice May

No. 5086/A/75

No. 5777/B/75

No. 5260/R/74

No. 845/B/76

IN THE COURT OF APPEAL

CRIMINAL DIVISION

Royal Courts of Justice

MR. G. F. R. HARKINS appeared on behalf of the Appellant Turnbull.

MR. D.A. ORDE appeared on behalf of the Appellant Camelo.

MR. J.C. MATHEW and MR. M.R. BELL appeared on behalf of the Crown.

MR. R. GREY and MR. H.W. ALLARDYCE appeared on behalf of the Appellant Whitby.

MR. J.C. MATHEW and MR. R.G. HAWKINGS appeared on behalf of the Crown.

MR. M.R. SELFE appeared on behalf of the Appellant Roberts.

MR. J.C. MATHEW and MR. A. DONNE appeared on behalf of the Crown.

THE LORD CHIEF JUSTICE

1

On the 13th October, 1975 at Newcastle-upon-Tyne Crown Court the Appellants Turnbull and Camelo were convicted of conspiracy to burgle. They were each sentenced to three years'

imprisonment. They both appeal against conviction by leave of the single Judge. On the 13th November, 1974 at the Central Criminal Court the Appellant Whitby was convicted of robbery and sentenced to six years' imprisonment. He appeals against his conviction by leave of this Court. On the 11th February, 1976 at Plymouth Crown Court the Appellant Roberts was convicted of unlawful wounding and sentenced to three months' detention which he has served. He appeals against his conviction by leave of the single Judge.

2

Each of these appeals raises problems relating to evidence of visual identification in criminal cases. Such evidence can bring about miscarriages of Justice and has done so in a few cases in recent years. The number of such cases, although small compared with the number in which evidence of visual identification is known to be satisfactory, necessitates steps being taken by the Courts, including this Court, to reduce that number as far as is possible. In our judgment the danger of miscarriages of justice occurring can be much reduced if trial Judges sum up to juries in the way indicated in this judgment.

3

First, whenever the case against an accused depends wholly or substantially on the correctness of one or more identifications of the accused which the defence alleges to be mistaken, the Judge should warn the jury of the special need for caution before convicting the accused in reliance on the correctness of the identification or identifications. In addition he should instruct them as to the reason for the need for such a warning and should make some reference to the possibility that a mistaken witness can be a convincing one and that a number of such witnesses can all be mistaken. Provided this is done in clear terms the Judge need not use any particular form of words.

4

Secondly, the Judge should direct the jury to examine closely the circumstances in which the identification by each witness came to be made. How long did the witness have the accused under observation? At what distance? In what light? Was the observation impeded in any way, as for example, by passing traffic or a press of people? Had the witness ever seen the accused before? How often? If only occasionally, had he any special reason for remembering the accused? How long elapsed between the original observation and the subsequent identification to the police? Was there any material discrepancy between the description of the accused given to the police by the witness when first seen by them and his actual appearance? If in any case, whether it is being dealt with summarily or on indictment, the prosecution have reason to believe that there is such a material discrepancy they should supply the accused or his legal advisers with particulars of the description the police were first given. In all cases if the accused asks to be given particulars of such descriptions, the prosecution should supply them. Finally, he should remind the jury of any specific weaknesses which had appeared in the identification evidence.

5

Recognition may be more reliable than identification of a stranger; but even when the witness is purporting to recognise someone whom he knows, the jury should be reminded that mistakes in recognition of close relatives and friends are sometimes made.

6

All these matters go to the quality of the identification evidence. If the quality is good and remains good at the close of the accused's case, the danger of a mistaken identification is lessened; but the poorer the quality, the greater the danger.

7

In our judgment when the quality is good as for example when the identification is made after a long period of observation, or in satisfactory conditions by a relative, a neighbour, a close friend, a workmate and the like, the jury can safely be left to assess the value of the identifying evidence even though there is no other evidence to support it: provided always, however, that an adequate warning has been given about the special need for caution. Were the Courts to adjudge otherwise, affronts to justice would frequently occur. A few examples, taken over the whole spectrum of criminal activity, will illustrate what the effects upon the maintenance of law and order would be if any law were enacted that no person could be convicted on evidence of visual identification alone.

8

Here are the examples. A had been kidnapped and held to ransom over many days. His captor stayed with him all the time. At last he was released but he did not know the identity of his kidnapper nor where he had been kept. Months later the police arrested X for robbery and as a result of what they had been told by an informer they suspected him of the kidnapping. They had no other evidence. They arranged for A to attend an identity parade. He picked out X without hesitation. At X's trial, is the trial Judge to rule at the end of the prosecution's case that X must be acquitted?

9

This is another example. Over a period of a week two police officers, B and C, kept observation in turn on a house which was suspected of being a distribution centre for drugs. A suspected supplier, Y, visited it from time to time. On the last day of the observation B saw Y enter the house. He at once signalled to other waiting police officers, who had a search warrant to enter. They did so; but by the time they got in, Y had escaped by a back window. Six months later C saw Y in the street and arrested him. Y at once alleged that C had mistaken him for someone else. At an identity parade he was picked out by B. Would it really be right and in the interests of justice for a Judge to direct Y's acquittal at the end of the prosecution's case?

10

A rule such as the one under consideration would gravely impede the police in their work and would make the conviction of street offenders such as pickpockets, car thieves and the disorderly very difficult. But it would not only be the police who might be aggrieved by such a rule. Take the case of a factory worker, D who during the course of his work went to the locker room to get something from his jacket which he had forgotten. As he went in he saw a workmate, Z, whom he had known for years and who worked nearby him in the same shop, standing by D's open locker with his hand inside. He hailed the thief by name. Z turned round and faced D; he dropped D's wallet on the floor and ran out of the locker room by another door. D reported what he had seen to his chargehand. When the charge-hand went to find z, he saw him walking towards his machine. Z alleged that D had been mistaken. A directed acquittal might well be greatly resented not only by D but by many others in the same shop.

11

When, in the judgment of the trial Judge, the quality of the identifying evidence is poor, as for example when it depends solely on a fleeting glance or on a longer observation made in difficult conditions, the situation is very different. The Judge should then withdraw the case from the jury and direct an acquittal unless there is other evidence which goes to support the correctness of the identification. This may be corroboration in the sense lawyers use that word; but it need not be so if its effect is to make the jury sure that there has been no mistaken identification: for example, X sees the accused snatch a woman's handbag; he gets only a fleeting glance of the thief's face as he runs off but he does see him entering a nearby house. Later he picks out the

accused on an identity parade. If there was no more evidence than this, the poor quality of the identification would require the Judge to withdraw the case from the Jury; but this would not be so if there was evidence that the house into which the accused was alleged by X to have run was his father's. Another example of supporting evidence not amounting to corroboration in a technical sense is to be found in [*R. v. Long* \(1973\) 57 Criminal Appeal Reports 871](#). The accused, who was charged with robbery, had been identified by three witnesses in different places on different occasions but each had only a momentary opportunity for observation. Immediately after the robbery the accused had left his home and could not be found by the police. When later he was seen by them he claimed to know who had done the robbery and offered to help to find the robbers. At his trial he put forward an alibi which the jury rejected. It was an odd coincidence that the witnesses should have identified a man who had behaved in this way. In our judgment odd coincidences can, if unexplained, be supporting evidence.