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## SUPREME COURT OF NEW SOUTH WALES — COURT OF CRIMINAL APPEAL

**PALMER v R**

Street CJ, Glass JA and Lusher J

7 August 1980 — [1981] 1 NSWLR 209; 1 A Crim R 458

**EVIDENCE – CAMERA SECURITY PHOTOGRAPHS OF BANK ROBBERY LEADING TO IDENTIFICATION OF ACCUSED – ADMISSIBILITY OF EVIDENCE.**

Appellant was convicted of 2 armed bank robberies. A crucial part of the Crown case was the tendering of bank security camera photographs showing robbery in progress and one robber wearing a stocking mask. Four Crown witnesses who had not been present at either robbery gave evidence that the photographs resembled the appellant. Two of the witnesses knew the appellant quite well, the other two only by sight. Appeal against conviction by contention that the evidence of the witnesses was inadmissible on the grounds—

- (a) that it was opinion evidence from witnesses who were not competent to express an opinion as to identity of a man with a stocking over his face with a man that they knew;
- (b) that some of it involved hearsay, an account of recognition on an earlier occasion prior to trial, rather than in the course of trial;
- (c) that the witnesses were being asked to state an opinion on an ultimate question which it was the function of the jury to determine.

**HELD: Appeal dismissed. Evidence admissible. There was no difference in point of principle between the identification evidence tendered and the more usual kind which identifies a person observed at the scene of a crime with the person appearing in a police photograph. Opinion evidence as to past recognitions by non-experts an exception to the hearsay rule. An alternative argument, that the trial Judge did not give the jury an adequate caution regarding the care with which they should approach the evidence of identity, also failed. Due care in directions exercised according to the circumstances. The answers to the question of identification as in this case, can only be given by a jury properly instructed upon the appropriate rules of law.**

**STREET CJ:** As I have earlier said, I entertain no doubt as to the admissibility of this evidence. Two persons such as the Furlongs who saw the photograph at the bank were, in my view, fully competent to give evidence at the trial identifying the man in that photograph as the man who used to live opposite to them. It is to be observed that Mrs Furlong gave her evidence in the past tense in that she said she recognised the man in the photograph as the man who lived opposite to her, meaning that she made this recognition at the time she saw the photograph at the bank. Mr Furlong carried his evidence expressly through to the present tense of the trial in his recognition of the man in the photograph as the man who used to live opposite to him and his wife. There was, however, no significance attaching to the past tense used by Mrs Furlong in the contest that arose at the trial regarding admissibility. The point which was argued was whether it was open to a witness such as Mr Furlong or Mrs Furlong to give evidence that a man shown in a security photograph was a particular individual known to them.

In my view such evidence is clearly admissible. It is quite apparent from a reading of Mrs Furlong's evidence that, although expressed in the past tense, she was confirming a continuing and current state of mind regarding the identity of the man in the photograph with the man who used to live opposite to her. Indeed, the absence of significance on this point of tense could not be made clearer than by the bringing forward of the matter into the present tense in the cross-examination of Mr Furlong. The matter being contested was essentially whether it was proper for a witness to say that a person shown in a photograph was a particular person known to them. I can see no basis for doubting the admissibility of evidence along these lines.

So far as concerns the evidence from Mrs Delaney, the position is even stronger. Mrs Delaney was able to say, and did in fact say, that the photographs shown to her of some of the scenes at the robbery at East Hills showed the appellant. Again I can see no justifiable basis, either in principle or on authority, for precluding this evidence from being placed before the Court. Mrs Johnson likewise in relation to the Oatley robbery said the same thing, namely, that the man photographed in the security photographs was the present appellant.