

46/81

SUPREME COURT OF VICTORIA — COURT OF CRIMINAL APPEAL

R v GOODALL

McInerney, Murray and Gobbo JJ

23 July 1981 — [1982] VicRp 3; [1982] VR 33

EVIDENCE – IDENTIFICATION EVIDENCE - IDENTIFICATION OF ACCUSED BY POLICE OFFICERS FROM BANK SECURITY PHOTOGRAPHS – RESEMBLANCE OF JACKET WORN BY ACCUSED RECOGNISED - WHETHER SUCH EVIDENCE ADMISSIBLE.

Appeal against the admissibility of identification evidence by S and F – such evidence being permitted at the trial. S. and F., police officers, recognised bank security photographs taken by a camera activated during a robbery. These photographs were seen by S. and F. in a newspaper and they recognised the man in the photo as a man with whom S. had had a conversation in a hotel a few nights preceding the robbery. S. but not F, was acquainted with the applicant prior to the meeting. What attracted their attention in the photograph was the jacket worn by person in the photograph, but S. also relied on physical characteristics of the gunman. Later at the premises of applicant, a jacket was found, later identified by witnesses of the robbery as being identical with that worn by the man on the day of the crime and by S. and F. as worn by the man in the hotel. At the trial the judge allowed F. and S. to give evidence of this out-of-court identification they had made from the photograph published in the newspaper. Upon appeal—

HELD: Appeal dismissed. This evidence was rightly admissible and there was no reason to exclude it by discretion.

Alexander v R [1981] HCA 17; (1981) 145 CLR 395; 34 ALR 289; (1981) 55 ALJR 355;

R v Palmer [1981] 1 NSWLR 209; 1 A Crim R 458; and

R v Keeley and Alexander [1980] VicRp 54; (1980) VR 571, followed.

The probative value of the evidence of S. and F. as to the resemblance of the jacket outweighed whatever prejudice might be in the minds of the jury from the circumstances that the applicant was known by S, and S. also happened to be a police officer.

MURRAY J: The basic problem this case raised is, in my opinion, whether, and if so the extent to which, the rules relating to identifications carried out at either line-ups or by means of books of photographs can be applied to what has been referred to as the identification in this case. For myself, I have no difficulty in thinking that there is no reason why a person who knows or is familiar with an accused person and has some special knowledge of his appearance at a particular time may not give evidence in court that a person shown in a security photograph taken during the course of a robbery and properly proved, is a photograph of the accused person. The weight of that evidence will obviously depend upon the clarity of the photograph and the detail which it reveals, but I see no basis on which it can be properly argued that such evidence is not admissible.

With some little hesitation I think that the same thing can be said as to a person giving evidence of an out-of-court identification he or she made of a photograph. Such evidence is admitted in the case of identifications carried out at line-ups, and I see no reason why, in particular cases, a witness should not be permitted to say that on a previous occasion he was shown a picture taken by a security camera, and on that previous occasion he did identify the person conducting the robbery and depicted in the picture as the accused person. Conceivably by reason of a lapse of time that witness may not be able to repeat the identification as at the time of the trial and it is for that reason that I see no objection to him being permitted to give evidence of an identification previously made by him.