

Ch 9: Visual and voice identification

Visual identification

Recognition

Recognition by police officers

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A *Turnbull* direction tailored to the facts of the case should always be considered when dealing with disputed recognitions: See *R v Rashid* [2019] EWCA Crim 2018. However, in this case, the safety of the convictions was not undermined by the judge's failure to state that confident recognitions by a number of police officers could still be mistaken.

Supporting evidence

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Evidence that another witness has identified a co-accused at the relevant time may be supporting evidence: *R v Dickens* [2021] 1 WLR 2257, CA.

Where a police officer, having acquired special knowledge through extensive viewing of CCTV purports to recognize the suspect from the CCTV, support for her recognition may be provided by the evidence of a facial mapping expert who has analysed the images and has found that there is strong support for saying that the suspect and the person in the CCTV are the same individual: *R v Yaryare* [2020] 4 WLR 156. However, in this case, the quality of the evidence of the police officer's recognition was sufficient to have enabled it to go to the jury without supporting evidence. See also *R v Dawes* [2021] EWCA Crim 760, where qualified identifications by police officers during flawed procedures were supportive of identifications by other officers

As to directions which should be given in respect of identifications from visual images by witnesses who have acquired special knowledge, guidance is now provided in the Crown Court Compendium (December 2020), Part 1, 15-4.

Pre-trial procedure

Code D, Para 3, Part A: eyewitnesses

In *R v Crampton* [2020] EWCA Crim 1334, it was held that while an informal recognition does not affect the accused's right to a formal identification procedure, there is an obvious risk that the subsequent formal procedure will simply confirm the earlier informal one and may give a false impression of its strength. However, a formal identification does not fall to be excluded simply because a prior informal identification has taken place: *R v Phillips* [2020] EWCA Crim 126; [2020] Crim LR 940.

Code D, Para 3, Part B: recognition by formal viewing of film, photographs and Images

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In respect of formal video identification parade electronic recording (VIPER) procedures, the identification officer must choose images which resemble the suspect as closely as possible in age, general appearance and position in life. However, once this duty is discharged, it is open to the officer 'to arrange for the imagery either to include or not to include some non-permanent feature of clothing or accessories [such as glasses] in order as closely as possible to match the description of the offender': see *R v Day* [2019] EWCA Crim 935 at [46] – [47]. In this case, the accused normally wore glasses, but the description of the offender was that he was not wearing glasses- the officer was entitled to use imagery which did not include glasses.

As to the importance of an accused's representative having an opportunity to vet the images beforehand, see Annex A para 7 of Code D and *R v Smith* [2020] NICA 42. As to it being properly open to a police officer to decline a witness's request to see images again once the procedure is completed, see Annex A para 11 and *R v Dickens* [2021] 1 WLR 2275 at [57].

**Code D, Para 3, Part C: recognition by informal viewing of film,
photographs and images**

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A recognition is invalidated because the images viewed show how the suspect looks many years after the offence was committed: *R v Crompton* [2020] EWCA Crim 1334

Breaches of Code D and exclusion

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In *R v Yaryare* [2020] 4 WLR 156, CA, it was not unfair to admit identifications from CCTV by a police officer who had acquired special knowledge from extensive viewings, but had failed to maintain contemporaneous viewing logs as required by the guidance laid down in *R v Smith* [2008] EWCA Crim 1342 and in breach of what is now para 3.36 of the Code. Other written material enabled the defence to test the reliability of the identifications, there was supporting evidence, and the images themselves were of good quality. See also *R v Dawes* [2021] EWCA Crim 760 where evidence of recognition from CCTV by officers was admissible even though there was an obvious disregard for practice and procedure, the record keeping having been described by the trial judge as 'a complete shambles'.

See also *R v Crompton* [2020] EWCA Crim 1334 where it was not unfair to admit an informal identification by social media where, in breach of Code D, there was no subsequent formal identification; the breach went to weight not admissibility.

Where there has been a breach of Code D but the issue is the credibility of the identifying witness rather than the unreliability of the identification evidence because of the way it has been obtained, it will not be unfair to admit the evidence, save in exceptional circumstances: *R v Thomasson* [2021] EWCA Crim 114 at [31].

Where an issue of exclusion arises, a *voir dire* is inappropriate except in rare cases where certain facts need to be determined before a ruling can be made. Ordinarily, a ruling will be made based on statements, depositions and submissions made by advocates. See *R v Dawes* [2021] EWCA Crim 760 at [22](iii) - [23].

Voice identification

The warning to be given

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Concerning the need for guidance on the effect of words being shouted, see, for example, *R v Crow* [2021] EWCA Crim 617. Evidence of voice identification by the victim of a serious assault was admissible where, immediately before the assault, he heard his assailant shout five monosyllabic words in no more than two seconds. The court held that recognition could be left to the jury because it was ‘instant’, the victim had known his assailant for many years and had had contact with him only hours before the assault. However, it is submitted that the circumstances of this identification created a very significant risk of mistake.