

Status:  Positive or Neutral Judicial Treatment

R. v Ali (Faraz)

Court of Appeal (Criminal Division)

17 July 2008

Case Analysis

Where Reported [2008] EWCA Crim 1522; [\[2009\] Crim. L.R. 40](#); [Official Transcript](#);

Case Digest

Subject: Criminal procedure

Keywords: Identification; Jury directions; Turnbull directions; Video recordings

Summary: A conviction based on identification made from closed-circuit television images was unsafe where the judge had given inadequate directions to the jury as to the possibility of mistaken identity and had wrongly treated the identification as an established fact.

Abstract: The appellant (F) appealed against his conviction of robbery.

The victim (V) had been set upon in the carriage of a train by 15 or 16 men. His mobile phone had been taken. He gave a description of one of the men, saying that he had been wearing a turquoise top and black tracksuit bottoms. Following a video identity parade, he identified F as that man, but said that he was not 100 per cent sure. Closed-circuit television images showed a man leaving the train and using his top to cover most of his face. Although the man was wearing neither a turquoise top, nor black tracksuit bottoms, a police officer, who had no particular expertise in the area, purported to identify the man as F. The jury saw the CCTV footage together with still images taken from it stamped with F's name. When shown the footage, V recognised nobody and did not pick out F. Under cross-examination he accepted that another man, standing next to the man said by the police to be F, could in fact have been F. The judge gave the standard JSB direction in respect of V's evidence. He referred to the person on the CCTV footage as F and indicated that the police officer's identification of F as the man on the CCTV footage was supporting evidence. He then indicated that the CCTV footage contained clear views of the man's face and invited the jury to form their own views.

F denied being present, and the issue was whether his conviction was safe.

Held: Appeal allowed.

It appeared that in his summing up the judge was telling the jury that they could convict if the person on the CCTV images was F. That was not, however, how the Crown had put the case. Moreover, his reference to the person on the CCTV images as F was unfortunate given that was the very issue the jury had to decide. It was doubtful whether the evidence of the police officer was supporting evidence. He was not purporting to give expert evidence and the image showed only a portion of the man's face. In any event, the directions given were quite inadequate. It was incumbent on the judge to direct the jury in such a way that they fully understood that mistakes could be made in purported identifications. No such direction was given in relation to the police officer's evidence. On the contrary, the judge appeared to have treated his recognition of F as an established fact. It was doubtful whether even the clearest of the images from the CCTV footage was sufficiently clear to permit a comparison by the jury with F. Only an expert could have made a meaningful comparison. Moreover, the judge did not remind the jury that they needed to be sure if they were going to rely on the images, either alone or in support of V's evidence, to convict F. There was an invariable requirement for the judge to warn the jury of the risk of mistaken identification and of the need to exercise particular care in any identification that they made for themselves, [R. v Blenkinsop \(David Richard\) \[1995\] 1 Cr. App. R. 7](#) applied. The circumstances of F's case required a careful and full direction as to the dangers of possible mistaken identification, and the judge had failed in that regard. F's conviction was unsafe and was quashed.

Judge: Hooper LJ; Cox J; Judge Stokes QC

Counsel: For the appellant: J Lynn. For the Crown: E Culver.

Significant Cases Cited

R. v Blenkinsop (David Richard)

[\[1995\] 1 Cr. App. R. 7](#); CA (Crim Div); 12 July 1994

All Cases Cited

Attorney General's Reference (No.2 of 2002)

[\[2002\] EWCA Crim 2373](#); [\[2003\] 1 Cr. App. R. 21](#); [Times, October 17, 2002](#); [\[2003\] Crim. L.R. 192](#); CA (Crim Div); 07 October 2002

R. v Blenkinsop (David Richard)

[\[1995\] 1 Cr. App. R. 7](#); CA (Crim Div); 12 July 1994

R. v Dodson (Patrick)

[\[1984\] 1 W.L.R. 971](#); [\(1984\) 79 Cr. App. R. 220](#); [\[1984\] Crim. L.R. 489](#); [\(1984\) 81 L.S.G. 1677](#); [\(1984\) 128 S.J. 364](#); CA (Crim Div); 12 April 1984

Key Cases Citing**Considered**

R. v Shanmugarajah (Prasanth)

[\[2015\] EWCA Crim 783](#); [\[2015\] 2 Cr. App. R. 14](#); CA (Crim Div); 01 April 2015

All Cases Citing**Considered**

R. v Shanmugarajah (Prasanth)

[\[2015\] EWCA Crim 783](#); [\[2015\] 2 Cr. App. R. 14](#); CA (Crim Div); 01 April 2015

Mentioned by

R. v Walters (Gavin)

[\[2013\] EWCA Crim 1361](#); CA (Crim Div); 01 July 2013

Journal Articles**Identification: visual identification - mistaken identification - direction to jury**

CCTV; Jury directions; Mistake; Visual identification.

[Crim. L.R. 2009, 1, 40-41](#)

Books**Archbold Criminal Pleading Evidence and Practice 2019 Ed.**

Chapter: Chapter 14 - Evidence of Identification

Documents: [14-64 Jury identification](#)

Archbold Criminal Pleading Evidence and Practice 2019 Ed.

Chapter: Chapter 14 - Evidence of Identification

Documents: [14-65 Recognition by witness](#)

Archbold Magistrates' Courts Criminal Practice 2019

Chapter: Chapter 10 - Evidence

Documents: [10-87](#)

Blackstone's Criminal Practice 2019

Chapter: Chapter F19 - Evidence of Identification

Documents: [CCTV, Video and Other Images](#)

Phipson on Evidence 19th Ed.

Chapter: Chapter 15 - Identification

Documents: [\(iv\) - Recognising people in photographs or on video](#)

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